

Regular Session, 2013

HOUSE BILL NO. 455

BY REPRESENTATIVE LEGER

TAX CREDITS: Establishes the Louisiana New Markets Jobs tax credit

1 AN ACT

2 To enact R.S. 22:832.1, relative to insurance premium tax credits; to establish the Louisiana
3 New Markets Jobs tax credit; to authorize a premium tax credit for investments in
4 low-income community development; to provide for the amount of the tax credit; to
5 provide for eligibility for and usage of the tax credit; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:832.1 is hereby enacted to read as follows:

9 §832.1. Louisiana New Markets Jobs Act; premium tax credit

10 A. The provisions of this Section shall be known as and may be cited as the
11 "Louisiana New Markets Jobs Act".

12 B. As used in this Section, the following words, terms, and phrases have the
13 meaning ascribed to them unless a different meaning is clearly indicated in the
14 context:

15 (1) "Applicable percentage" means zero percent for the first two credit
16 allowance dates and ten percent for the next four credit allowance dates.

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

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

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

1 (3) "Department" means the Department of Insurance.

2 (4) "Letter ruling" means a written interpretation of law to a specific set of
3 facts provided by the applicant requesting a letter ruling.

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

6 (6) "Qualified active low-income community business" has the meaning
7 given such term in Section 45D of the Internal Revenue Code of 1986, as amended,
8 and 26 CFR 1.45D-1. A business shall be considered a qualified active low-income
9 community business for the duration of the qualified community development
10 entity's investment in, or loan to, the business if the entity reasonably expects, at the
11 time it makes the investment or loan, that the business will continue to satisfy the
12 requirements for being a qualified active low-income community business
13 throughout the entire period of the investment or loan.

14 (7) "Qualified community development entity" has the meaning given such
15 term in Section 45D of the Internal Revenue Code of 1986, as amended; provided
16 that such entity has entered into, for the current year or any prior year, an allocation
17 agreement with the Community Development Financial Institutions Fund of the
18 United States Treasury Department with respect to credits authorized by Section 45D
19 of the Internal Revenue Code of 1986, as amended, which includes the state of
20 Louisiana within the service area set forth in such allocation agreement. The term
21 shall include qualified community development entities that are controlled by or
22 under common control with any such qualified community development.

23 (8) "Qualified equity investment" means any equity investment in a qualified
24 community development entity that meets each of the following criteria:

25 (a) Is acquired after the effective date of this Act at its original issuance
26 solely in exchange for cash or, if not so acquired, was a qualified equity investment
27 in the hands of a prior holder.

28 (b) Has at least one hundred percent of its cash purchase price used by the
29 issuer to make qualified low-income community investments in qualified active low-

1 income community businesses located in this state by the first anniversary of the
2 initial credit allowance date.

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

6 (9) "Qualified low-income community investment" means any capital or
7 equity investment in, or loan to, any qualified active low-income community
8 business. With respect to any one qualified active low-income community business,
9 the maximum amount of qualified low-income community investments made in that
10 business, on a collective basis with all of its affiliates that may be counted towards
11 satisfaction of Subparagraph (8)(b) of this Subsection is ten million dollars whether
12 issued by one or several qualified community development entities. Any amounts
13 returned or repaid by such qualified active low-income community business may be
14 reinvested in such qualified active low-income community business and not be
15 counted against such ten million dollar limit.

16 (10) "State premium tax liability" means any liability incurred by any entity
17 under the provisions of R.S. 22:831, 836, 838, and 842 or, if the tax liability under
18 R.S. 22:831, 836, 838, and 842 is eliminated or reduced, the term shall also mean
19 any tax liability imposed by the state on an insurance company or other person that
20 had premium tax liability under the laws of this state.

21 C.(1) Any entity that makes a qualified equity investment is vested with an
22 earned credit against state premium tax liability that may be utilized as follows:

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

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

1 (2) The amount of the credit claimed by an entity shall not exceed the
2 amount of such entity's state premium tax liability for the tax year for which the
3 credit is claimed. Any amount of tax credit that the entity is prohibited from
4 claiming in a taxable year as a result of this Paragraph may be carried forward for
5 use in future taxable years for a period not to exceed ten years.

6 D.(1) Tax credits earned by a partnership, limited liability company, S-
7 corporation, or other pass through entity may be allocated to the partners, members,
8 or shareholders of such entity for their direct use in accordance with the provisions
9 of any agreement among such partners, members, or shareholders.

10 (2)(a) Any tax credits not previously claimed by a taxpayer against its
11 premium tax may be transferred or sold to another Louisiana taxpayer, subject to the
12 following conditions:

13 (i) A single transfer or sale may involve one or more transferees.

14 (ii) Transferors and transferees shall submit to the department, in writing, a
15 notification of any transfer or sale of tax credits within thirty days after the transfer
16 or sale of such tax credits which notice contains the amount of the remaining tax
17 credit balance after transfer, all tax identification numbers for both transferor and
18 transferee, the date of the transfer, the amount transferred, the price paid by the
19 transferee to the transferor, and any other information required by the department.

20 (b) Failure to comply with this Paragraph will result in the disallowance of
21 the tax credit until the taxpayers are in full compliance.

22 (c) The transfer or sale of this credit does not extend the time in which the
23 credit can be used. The carry forward period for a credit that is transferred or sold
24 begins on the date on which the credit was originally earned.

25 (d) To the extent that the transferor did not have rights to claim or use the
26 credit at the time of the transfer, the department shall either disallow the credit
27 claimed by the transferee or recapture the credit from the transferee.

28 E.(1) A qualified community development entity that seeks to have an equity
29 investment designated as a qualified equity investment and eligible for tax credits

1 under this Section shall apply to the department. The qualified community
2 development entity shall include each of the following in or attached to its
3 application:

4 (a) Evidence of the applicant's certification as a qualified community
5 development entity, including evidence that Louisiana is contained in the service
6 area of the entity.

7 (b) A copy of the allocation agreement executed by an applicant, or its
8 controlling entity, and the Community Development Financial Institutions Fund.

9 (c) A certificate executed by an executive officer of the applicant attesting
10 that the allocation agreement remains in effect and has not otherwise been revoked
11 or cancelled by the Community Development Financial Institutions Fund.

12 (d) A description of the proposed amount, structure, and purchaser of the
13 qualified equity investment.

14 (e) Identifying information for any entity that will earn tax credits as a result
15 of the issuance of the qualified equity investment.

16 (f) Examples of the types of qualified active low-income businesses in which
17 the applicant, its controlling entity, or affiliates of its controlling entity have invested
18 under the Federal New Markets Tax Credit Program. Applicants are not required to
19 identify qualified active low-income community businesses in which they will invest
20 when submitting an application.

21 (2) Within thirty days after receipt of a completed application containing the
22 information set forth in Paragraph (1) of this Subsection, including the deposit as
23 required in Subsection H of this Section, the department shall grant or deny the
24 application in full or in part. If the department denies any part of the application, it
25 shall inform the qualified community development entity of the grounds for the
26 denial. If the qualified community development entity provides additional
27 information required by the department or otherwise completes its application within
28 fifteen days of the notice of denial, the application shall be considered completed as
29 of the original date of the submission. If the qualified community development

1 entity fails to provide the information or complete its application within the fifteen-
2 day period, the application remains denied and must be resubmitted in full with a
3 new submission date, and the department shall refund the performance deposit.

4 (3) If the application is granted, the department shall certify the proposed
5 equity investment as a qualified equity investment that is eligible for tax credits
6 under this Section, subject to the limitations contained in Paragraph (5) of this
7 Subsection. The department shall provide written notice of the certification to the
8 qualified community development entity. The notice shall include the names of
9 those entities who will earn the credits and their respective credit amounts. If the
10 names of the entities that are eligible to utilize the credits change due to a transfer
11 of a qualified equity investment or an allocation pursuant to Paragraph (D)(1) of this
12 Section, the qualified community development entity shall notify the department of
13 such change.

14 (4) The department shall certify qualified equity investments in the order in
15 which applications are received by the department. Applications received on the
16 same day shall be deemed to have been received simultaneously. For applications
17 that are complete and received on the same day, the department shall certify,
18 consistent with remaining qualified equity investment capacity, the qualified equity
19 investments in proportionate percentages based upon the ratio of the amount of
20 qualified equity investment requested in an application to the total amount of
21 qualified equity investments requested in all applications received on the same day.

22 (5) A total of one hundred twenty-five million dollars of qualified equity
23 investment authority shall be available for certification and allocation. The
24 department shall accept applications beginning on September 1, 2013, for allocation
25 and certification of up to sixty-two million five hundred thousand dollars of qualified
26 equity investments. The department shall accept applications for the remaining
27 sixty-two million five hundred thousand dollars of such authority beginning on
28 September 1, 2014. If a pending request cannot be fully certified due to these limits,
29 the department shall certify the portion that may be certified unless the qualified

1 community development entity elects to withdraw its request rather than receive
2 partial certification.

3 (6) An approved applicant may transfer all or a portion of its certified
4 qualified equity investment authority to its controlling entity or any qualified
5 community development entity that is controlled by or under common control with
6 the applicant, provided that the applicant provides the information required in the
7 application with respect to such transferee and the applicant notifies the department
8 of such transfer with the notice of receipt of the cash investment set forth in
9 Paragraph (7) of this Subsection.

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

27 F. The department shall recapture, from the entity that claimed the credit on
28 a return, the tax credit allowed pursuant to this Section if either of the following
29 occur:

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

6 (2) The issuer fails to invest an amount equal to one hundred percent of the
7 purchase price of the qualified equity investment in qualified low-income
8 community investments in Louisiana within twelve months of the issuance of the
9 qualified equity investment and maintain such level of investment in qualified low-
10 income community investments in Louisiana until the last credit allowance date for
11 the qualified equity investment. For purposes of this Section, an investment shall be
12 considered held by an issuer even if the investment has been sold or repaid if the
13 issuer reinvests an amount equal to the capital returned to or recovered by the issuer
14 from the original investment, exclusive of any profits realized, in another qualified
15 low-income community investment within twelve months of the receipt of such
16 capital. Periodic amounts received during a calendar year as repayment of principal
17 on a loan that is a qualified low-income community investment shall be treated as
18 continuously invested in a qualified low-income community investment if the
19 amounts are reinvested in another qualified low-income community investment by
20 the end of the following calendar year as set forth in 26 CFR 1.45D-1. An issuer
21 shall not be required to reinvest capital returned from qualified low-income
22 community investments after the sixth anniversary of the issuance of the qualified
23 equity investment, the proceeds of which were used to make the qualified low-
24 income community investment, and the qualified low-income community investment
25 shall be considered held by the issuer through the seventh anniversary of the
26 qualified equity investment's issuance.

27 G. Enforcement of the recapture provisions of Subsection F of this Section
28 shall be subject to a six month cure period. No recapture shall occur until the
29 qualified community development entity has been given notice of noncompliance by

1 the department and afforded six months from the date of such notice to cure the
2 noncompliance.

3 H.(1) A qualified community development entity that seeks to have an equity
4 investment designated as a qualified equity investment and eligible for tax credits
5 pursuant to this Section shall pay a deposit in the amount of five hundred thousand
6 dollars to the department for deposit in the New Markets performance guarantee
7 account, which is hereby established. The entity shall forfeit the deposit in its
8 entirety if either:

9 (a) The qualified community development entity and all transferees pursuant
10 to Paragraph (E)(6) of this Section fail to issue the total amount of qualified equity
11 investments certified by the department and receive cash in the total amount certified
12 under Paragraph (E)(5) of this Section within the time period set forth in Paragraph
13 (E)(7) of this Section.

14 (b) The qualified community development entity or any transferee pursuant
15 to Paragraph (E)(6) of this Section that issues a qualified equity investment certified
16 pursuant to this Section fails to meet the investment requirement under Paragraph
17 (F)(2) of this Section by the second credit allowance date of such benefit of the six
18 month cure period established pursuant to Subsection G of this Section.

19 (2) The deposit required by Paragraph (1) of this Subsection shall be
20 deposited with the department and held in the New Markets performance guarantee
21 account until such time as compliance with the provisions of this Subsection shall
22 have been established. The qualified community development entity may request a
23 return of the deposit from the department no earlier than thirty days after having met
24 all the requirements of Paragraph (1) of this Subsection. The department shall have
25 thirty days to comply with such request or give notice of noncompliance.

26 I.(1) The department shall issue letter rulings regarding the tax credit
27 program authorized under and subject to the terms and conditions set forth in this
28 Section, subject to the terms and conditions set forth in this Section.

1 (2) The department shall respond to a request for a letter ruling within sixty
2 days of receipt of such request. The applicant may provide a draft letter ruling for
3 the department's consideration. The applicant may withdraw the request for a letter
4 ruling, in writing, prior to the issuance of the letter ruling. The department may
5 refuse to issue a letter ruling for good cause but shall list the specific reasons for
6 refusing to issue the letter ruling. Good cause includes but is not limited to:

7 (a) The applicant requests the department to determine whether a statute is
8 constitutional or a regulation is lawful.

9 (b) The request involves a hypothetical situation or alternative plans.

10 (c) The facts or issues presented in the request are unclear, overbroad,
11 insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling.

12 (d) The issue is currently being considered in a rulemaking procedure,
13 contested case, or other agency or judicial proceeding that may definitely resolve the
14 issue.

15 (3) Letter rulings shall bind the department and the department's agents and
16 their successors until such time as the entity or its shareholders, members, or
17 partners, as applicable, claim all of such credits on a Louisiana tax return or report,
18 subject to the terms and conditions set forth in properly published regulations. The
19 letter ruling shall apply only to the applicant.

20 (4) In rendering letter rulings and making other determinations under this
21 Section, to the extent applicable, the department shall look to Section 45D of the
22 Internal Revenue Code of 1986, as amended, and the rules and regulations issued
23 thereunder for guidance.

24 J.(1) An entity claiming a credit pursuant to this Section is not required to
25 pay any additional retaliatory tax levied by R.S. 22:836 as a result of claiming that
26 credit.

27 (2) In addition to the exclusion in Paragraph (1) of this Subsection, it is the
28 intent of this Act that an entity claiming a credit pursuant to this Section is not
29 required to pay any additional tax that may arise as a result of claiming that credit.

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

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

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

12 (2) Thereafter, the qualified community development entity will submit an
13 annual report to the department within forty-five days of the beginning of the
14 calendar year during the compliance period. No annual report shall be due prior to
15 the first anniversary of the initial credit allowance date. The report shall include but
16 is not limited to the following:

17 (a) Number of employment positions created and retained as a result of
18 qualified low-income community investments.

19 (b) Average annual salary of positions described in Subparagraph (a) of this
20 Paragraph.

21 (3) The qualified community development entity is not required to provide
22 the annual report set forth in Paragraph (2) of this Subsection for qualified low-
23 income community investments that have been redeemed or repaid.

24 L.(1) The department may promulgate rules to implement the provisions
25 of this Section.

26 (2) The department shall issue all forms and notices required hereunder in
27 accordance with the provisions of this Section.

28 M. The provisions of this Section shall apply only to tax returns or reports
29 originally due on or after January 1, 2014.

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)]

Leger

HB No. 455

Abstract: Creates the Louisiana New Markets Jobs Act.

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

Proposed law creates the Louisiana New Markets Jobs Act which provides an earned income tax credit against the premium tax liability for any entity who makes an investment of private capital into low-income community businesses located in Louisiana.

Proposed law provides several definitions, including "qualified active low-income community business" (QALICB or "business") and a "qualified community development entity" (QCDE or "entity") to mean that which is ascribed in Section 45D of the Internal Revenue Code. Under federal law, a QALICB 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. QCDE are privately managed investment entities that have received New Market Tax Credit allocation authority.

Proposed law defines "qualified equity investment" (QEI or "investment") as an equity investment in a QCDE entity that meets certain criteria and defines "qualified low-income community investment" (QLICI or "investment") as any capital or equity investment in, or loan to, any QALICB business.

Proposed law further provides that such tax credit is equal to 0% for the first two years and 10% for the next four years, multiplied by the purchase price paid to the issuer of such QEI investment. The total of all such credits taken cannot exceed the entity's state premium tax liability for the tax year for which the credit is claimed; however, any credits that are not used in the first taxable year eligible for use are carried forward for up to ten years.

Proposed law provides that the premium tax credits earned by partnerships, limited liability companies, S-corporations, or other pass through entities can be allocated to the partners, members, or shareholders of such entities and provides that any unclaimed tax credits are transferable to one or more transferees.

Proposed law provides that a QCDE entity seeking to have an equity investment designated as a QEI investment must apply to the Department of Insurance (department) in an application for certification. Proposed law requires the department to grant or deny such application by a QCDE entity within 20 days after receipt. Further requires the department to inform such entity of the grounds for denial of any part of the application, extending such entity the right to provide additional information or to complete its application within 15 days of notice of the denial.

Proposed law requires the department to certify QEI investments in the order in which the applications are received by the department.

Proposed law provides that a total of \$125,000,000 of QEI investment authority is available for certification and allocation. Further requires the department to accept applications beginning September 1, 2013, for allocation and certification of up to \$62,500,000.00 of QEI.

Proposed law requires QCDE entities or their transferees to issue the QEI investment within 30 days of receiving notice of certification. Further requires the entities or their transferees to provide the department with evidence of the receipt of the cash investment and the designation of the investment within five business days after receipt. Proposed law provides that in the event that a QCDE entity or its transferee does not receive the cash investment within 30 days of receipt of the certification notice, the certification lapses.

Proposed law further requires the department to recapture the tax credit from the entity that claimed such tax credit following the occurrence of either of the following events:

- (1) Any amount of a federal tax credit available with respect to a QEI investment that is eligible for a credit under proposed law is recaptured under Section 45D of the Internal Revenue Code, as amended. Proposed law requires the department's recapture to be proportionate to the federal recapture.
- (2) The issuer fails to invest an amount equal to 100% of the purchase price of the QEI investment in a QLICI investment in Louisiana within 12 months of the issuance of the QEI investment and to further maintain such level of investment until the last credit allowance date for the qualified equity investment.

Proposed law provides for a six month cure period before the department recaptures an entity's credits. A recapture can only occur after the entity has been given notice of noncompliance and six months from the date of such notice to cure such noncompliance.

Proposed law requires any QCDE entity seeking to have an equity investment qualified must pay a \$500,000 deposit to the department for deposit in the New Markets performance guarantee account. Proposed law requires the department to hold the \$500,000 deposit in the New Markets performance guarantee account until such time as the entity meets compliance standards set forth by proposed law. Further allows the entity to request a return of such deposit after 30 days of meeting compliance requirements.

Proposed law requires the department, upon request, to issue letter rulings regarding the tax credit program. Further requires the department to seek guidance from Section 45D of the Internal Revenue Code of 1986 in issuing such letter rulings and to respond to such requests within 60 days.

Proposed law requires QCDE entities that issue QEI investments to submit a report to the department within the first five business days after the first anniversary of the initial credit allowance date. Such report must provide documentation as to the investment of 100% of the purchase price in QLICI investments in a QALICB businesses located in Louisiana. Proposed law further requires the entity to submit an annual report to the department within 45 days of the beginning of the calendar year for the compliance period. The report must include the number of employment positions created and retained as a result of the investments and the average annual salary of such positions.

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

Proposed law applies to tax returns or reports originally due on or after January 1, 2014.

(Adds R.S. 22:832.1)