

Regular Session, 2011

HOUSE BILL NO. 555

BY REPRESENTATIVE ELLINGTON

TAX CREDITS: Creates the Louisiana Entrepreneurial Assistance and Development (LEAD) Program for tax credits for venture capital investments

1 AN ACT

2 To enact R.S. 22:832.1 and Chapter 55 of Title 51 of the Louisiana Revised Statutes of
3 1950, to be comprised of R.S. 51:3110 through 3117, relative to tax credits; to
4 establish the Louisiana Entrepreneurial Assistance and Development Program to
5 provide a credit against insurance premium tax for certain venture capital investors;
6 to provide for administration of the program by the department of economic
7 development; to provide for applications and to establish criteria for approval; to
8 establish criteria for investments; to provide for reporting; to provide for other
9 requirements and limitations; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

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

12 §832.1 Insurance Premium Tax; Louisiana Entrepreneurial Assistance and
13 Development Program; tax credit for investors

14 A. There is hereby authorized a tax credit against premium tax for an investor
15 that makes an investment of eligible capital and receives certification for a tax credit
16 pursuant to the provisions of R.S. 51:3111. The credit shall be earned in the year
17 that the investment is made. The amount of the credit shall be equal to seventy-five
18 percent of the amount of the investment. The premium tax credit shall be available
19 for, but not limited to, taxes charges on insurance premiums under R.S. 22:831, 836,
20 838, and 842.

1 B. In any one taxable year, no more than twenty-five percent of the total
2 premium tax credit which is earned with respect to a particular investment may be
3 used, provided that:

4 (1) The taxpayer may not utilize credits in any taxable year in excess of its
5 premium tax liability for such taxable year.

6 (2) The tax credits shall not initially be applicable against premium tax
7 liability generated in any calendar year until the third calendar year after the year in
8 which the investment of eligible capital was made pursuant to the requirements of
9 the Louisiana Entrepreneurial Assistance and Development Program as provided in
10 R.S. 51:3110, et seq.

11 (3) The premium tax credit shall not be applicable against any estimated
12 premium tax payments on or before April 15, 2015.

13 C. In accordance with the limitations provided in this Chapter, premium tax
14 credits available under this Section may be carried forward for use in future years.

15 D. Any investor who earns a premium tax credit pursuant to this Section shall
16 be allowed to transfer such credits to any insurance company, which tax credits shall
17 be subject to the forfeiture provisions of R.S. 51:3116. Within thirty days after the
18 transfer of tax credits, the original holder of the tax credits shall notify the
19 department in writing of the name of the new holder of the tax credits and the
20 amount of tax credits transferred, the price of such credits, the date the transfer
21 occurred, the tax identification number of the transferee, and the remaining balance
22 of credits held by the transferor. In the event such notice is not received by the
23 department within the thirty day period, the transfer or sale shall be void.

24 Section 2. Chapter 55 of Title 51 of the Louisiana Revised Statutes of 1950, to be
25 comprised of R.S. 51:3110 through 3117 is hereby enacted to read as follows:

26 §3110. Louisiana Entrepreneurial Assistance and Development Program

27 This Chapter may be cited as the "Louisiana Entrepreneurial Assistance and
28 Development Program".

1 A. Recognizing the need to bring venture and expansion capital to the
2 entrepreneurs of Louisiana both to combat the current economic downturn and
3 resulting difficulties in securing capital from traditional sources and to ensure the
4 Louisiana-based development of the small and medium sized businesses that have
5 traditionally created the vast majority of new jobs nationwide, the legislature deems
6 it in the public interest to enact the Louisiana Entrepreneurial Assistance and
7 Development Program (LEAD) to provide an incentive to attract venture and
8 expansion capital to eligible businesses.

9 B. As used in this Chapter:

10 (1) "Allocation date" means the date a LEAD fund receives an investment of
11 eligible capital equaling the amount of eligible capital allocated to its investors
12 pursuant to R.S. 51:3112;

13 (2) "Department" means the department of economic development;

14 (3) "Eligible business" means a business that:

15 (a) At the time of a LEAD fund's initial investment therein:

16 (i) Has one hundred or fewer full-time employees;

17 (ii) Has at least eighty percent of its employees domiciled in Louisiana or at
18 least eighty percent of its payroll paid to employees domiciled in Louisiana; and

19 (iii) Is not engaged in any of the following: retail sales, real estate
20 development, gaming, natural resource extraction or exploration, the business of
21 insurance, banking or lending, or the provision of professional services provided by
22 accountants, lawyers, or physicians; and

23 (b) Has either:

24 (i) A net worth less than five million dollars at the time of such investment;

25 or

26 (ii) Fifteen million dollars or less in net income in the fiscal year
27 immediately preceding such investment;

1 (4) "Eligible capital" means an investment of cash by an investor in a LEAD
2 fund that fully funds the purchase price of an equity interest in the LEAD fund or a
3 debt instrument issued by a LEAD fund, at par value or a premium, that:

4 (a) Has an original maturity date at least five years after the date of issuance,

5 (b) Has a repayment schedule that is not faster than a level principal
6 amortization over five years, and

7 (c) Has no interest, distribution, or payment features tied to the LEAD fund's
8 profitability or the success of its investments.

9 (5) "LEAD fund" means a Louisiana partnership, corporation, trust, or limited
10 liability company, whether organized on a profit or not-for-profit basis, that:

11 (a) Is managed by at least two principals or persons domiciled in Louisiana
12 that have at least five years of experience each in managing venture capital or private
13 equity funds, with at least fifteen million dollars of such funds having been invested
14 by persons that are unaffiliated with such principals or persons, and (i) has received
15 an equity investment of capital other than eligible capital equal to at least five
16 hundred thousand dollars, and (ii) is not, or will not be after the receipt of eligible
17 capital, controlled by or under common control with, one or more insurance
18 companies. The provision of this definition shall not be interpreted to preclude an
19 insurance company from exercising its legal rights and remedies, including interim
20 management of a LEAD fund, if authorized by law, with respect to a LEAD fund that
21 is in default of its statutory or contractual obligations to the insurance company or
22 establishing controls to ensure that the LEAD fund satisfies the requirements of this
23 Chapter. An investment of eligible capital shall not result in insurance company
24 control unless such investment exceeds forty million dollars per taxpayer;

25 (6) "Match" means a cash investment in an eligible business either
26 contemporaneous with or subsequent to an investment of eligible capital by a LEAD
27 fund in such eligible business, other than an investment made with eligible capital
28 either from the LEAD fund or another LEAD fund.

1 (7) "Secretary" means the secretary of the department of economic
2 department.

3 §3111. Louisiana Entrepreneurial Assistance and Development Program; Premium
4 tax; tax credits

5 An investor that makes an investment of eligible capital in a LEAD fund that
6 is approved by the department pursuant to R.S. 51:3112 may claim a credit against
7 premium tax liability as provided in R.S. 22:832.1. The premium tax credit is earned
8 in the year of investment of eligible capital, and shall be subject to the rules on
9 utilization set forth in R.S. 22:832.1 and the forfeiture provisions of R.S. 51:3116.

10 §3112 Application; certification; reporting

11 A. On or before November 1, 2011 the secretary shall begin to accept
12 applications for certification as a LEAD fund and for allocations of eligible capital
13 and tax credits. Applications shall include:

14 (1) The amount of eligible capital the applicant proposes to raise;

15 (2) A non-refundable application fee of seven thousand five hundred dollars;

16 (3) Evidence that the applicant satisfies the requirements of a "LEAD fund"
17 as defined in R.S. 51:3110(B)(5).

18 (4) An affidavit by each investor committing to an investment of eligible
19 capital;

20 (5) A business plan detailing:

21 (a) The approximate percentage of eligible capital the applicant will invest
22 in eligible businesses by the second, fourth, sixth, and eight anniversaries of its
23 allocation date;

24 (b) The stage of development and industry segments listed by the North
25 American Industrial Classification System code in which the applicant will invest;
26 and

27 (c) The types of investments the applicant will make, including but not
28 limited to debt, equity, convertible debt, and debt with equity-like features;

1 (6) A revenue impact assessment prepared by an independent third party
2 contracted by the department and paid for by the applicant demonstrating that the
3 applicant's investments, if made in accordance with its business plan, will have a
4 positive or neutral revenue impact on the state taking into account the amount and
5 timing of tax credits earned by investors of eligible capital in the LEAD fund and the
6 match of one hundred percent of the eligible capital invested by the applicant. The
7 assessment shall include the applicant's estimate of the number of jobs that will be
8 created or retained as a result of the investment of one hundred percent of the
9 applicant's eligible capital in eligible business; and

10 (7) Any offering material involving the sale of securities of a LEAD fund,
11 which offering material must include the following statements "The state of
12 Louisiana is not liable for damages to an investor in an issuer participating in the
13 Louisiana Entrepreneurial Assistance and Development (LEAD) Program. Use of
14 the word 'Louisiana' or other terms used in conjunction with the LEAD Program in
15 an offering does not constitute a recommendation or endorsement of the investment
16 by the Louisiana Department of Economic Development."

17 B.(1) Not later than the thirtieth day after the date on which an application
18 for certification is received by the department, the secretary shall either:

19 (a) Issue the certification and notify the applicant of the amount of eligible
20 capital and associated tax credits allocated to its investors, or

21 (b) Refuse to issue the certification and communicate in detail to the
22 applicant the grounds for the refusal from the department. If an amended application
23 is received by the department, the department shall have fifteen days therefrom by
24 which to communicate its approval or refusal of such amended application to the
25 applicant.

26 (2) Applications for tax credits pursuant to this Section shall be accepted and
27 approved on a first-come, first -served basis with all applications received on the
28 same date deemed to be received simultaneously. No more than two hundred million
29 in eligible capital shall be allocated under this program. If applications for tax

1 credits received by the department on any date exceed the total amount of approval
2 authority remaining under this Chapter on such date, the eligible capital and
3 associated tax credits shall be allocated on a pro-rata basis with each amount of
4 eligible capital requested by applicants on such date multiplied by the amount of
5 remaining approval authority on such date.

6 C.(1) Upon the receipt of eligible capital each certified LEAD fund shall
7 report to the secretary the following:

8 (a) The name of each investor from whom eligible capital was received,
9 including the investor's tax identification number;

10 (b) The amount of eligible capital received from each investor; and

11 (c) The date on which the eligible capital was received.

12 (2) If a LEAD fund does not receive an investment of eligible capital
13 equaling the amount of eligible capital allocated to it pursuant to Subsection (B)(1)
14 of this Section prior to the fifth business day after receipt of certification, the LEAD
15 fund shall notify the secretary by overnight common carrier delivery service and that
16 portion of eligible capital allocated to the investor shall be forfeited. Any forfeited
17 eligible capital shall be reallocated, provided that if such forfeited eligible capital
18 was subject to a pro rata allocation, it shall be reallocated first to investors in the
19 other LEAD funds affected by such pro rata allocation.

20 §3113. Approval of LEAD fund investments in eligible businesses

21 A. Prior to making any initial investment in a potential business, a LEAD
22 fund shall request a written opinion from the department as to whether the business
23 in which it is proposes to invest is an eligible business, including whether such
24 investment is consistent with the LEAD fund's business plan and satisfies the
25 requirement regarding the investment of eligible capital in eligible business as
26 provided in R.S. 51:3115(A)(2). If within fifteen days from the date of receipt of
27 the request the department has neither granted nor denied the request, the proposed
28 investment shall be deemed an eligible business that is consistent with the LEAD
29 fund's business plan and that satisfies the requirement of R.S. 51: 3115(A)(2) if a

1 written opinion is requested as to satisfaction of that requirement. The denial of a
2 request shall contain reasons for denial.

3 B. A LEAD fund may not invest more than fifteen percent of its eligible
4 capital in any one eligible business without prior approval of the secretary.

5 §3114. LEAD Fund; Maintenance of certification; reporting

6 A. To maintain certification, a LEAD fund shall:

7 (1) Be in compliance with the investment parameters set forth in its business
8 plan, provided a LEAD fund may apply to the secretary to amend its business plan
9 based on unavoidable or reasonably unanticipated changes to various conditions,
10 including but not limited to the general economic climate of the state or particular
11 sectors of the economy, technological advances and high employment and revenue
12 growth opportunities, with approval for such changes not to unreasonable withheld
13 by the secretary;

14 (2) Have invested twenty-five percent of its eligible capital in eligible
15 businesses by the second anniversary of its allocation date;

16 (3) Have invested fifty percent of its eligible capital in eligible businesses
17 by the fourth anniversary of its allocation date; and

18 (4) Have invested one hundred percent of its eligible capital in eligible
19 businesses, bank deposits, certificates of deposit, or other debt securities issues or
20 guaranteed by investment-grade issuers or money market, mutual, or exchange
21 traded funds whose investments are limited to the foregoing.

22 B. Not later than January thirty-first of each year, each LEAD fund shall
23 report to the secretary:

24 (1) The amount of eligible capital remaining at the end of the preceding year
25 to be invested in eligible businesses;

26 (2) Each investment in an eligible business, its location, and two-digit North
27 American Industrial Classification System code;

28 (3) The percentage of eligible capital invested pursuant to the commitment
29 set forth in R.S. 51:3124(7);

1 (4) Distributions made by the LEAD fund in the preceding year; and

2 (5) The number of jobs created or retained as a result of the LEAD fund's
3 investments in eligible businesses during the preceding year. Each LEAD fund shall
4 provide to the secretary annual audited financial statements not later than June
5 thirtieth, annually.

6 §3115. LEAD fund; distributions

7 A. To make a distribution or payment, other than those listed in Subsection
8 (B) of this Section, a LEAD fund must have:

9 (1) Invested on hundred percent of its eligible capital in eligible businesses;

10 (2) Invested at least fifty percent of its eligible capital in eligible businesses
11 that are either

12 (a) Engaged in the development of initial product or service offerings, such
13 as prototype development or establishment of initial production or service processes,
14 or

15 (b) Within one of the following industry segments: digital media/software
16 development, next-generation automobiles, specialty health care, renewable
17 energy/energy efficiencies, water management or next-wave oil and gas, or other
18 industry segments approved by the secretary; and

19 (3) The LEAD fund shall have achieved a match amount equal to at least one
20 hundred percent of the LEAD fund's allocation of eligible capital.

21 B. At any time, a LEAD fund may make:

22 (1) Distributions related to the payment of any projected increase in federal
23 or state taxes, including penalties and interest related to state and federal income
24 taxes, of the equity owners of the LEAD fund resulting from the earning or other tax
25 liability of the LEAD fund to the extent that the increase is related to the ownership,
26 management, or operation of the LEAD fund;

27 (2) Payments of interest and principal on the debt of the LEAD fund; or (3)
28 payments related to the reasonable costs and expenses of forming, syndicating,
29 managing, and operating the fund, provided the distribution of payment is not made

1 directly or indirectly to an investor that has invested eligible capital in the LEAD
2 fund, including: (i) reasonable and necessary fees paid for professional services,
3 including legal and accounting services, related tot the formation and operation of
4 the LEAD fund; and (ii) an annual management fee in an amount that does not
5 exceed two and one-half percent of the eligible capital of the LEAD fund, provided
6 that a LEAD fund may not pay management fees if it fails to meet the requirement
7 set forth in R.S. 51:3114.

8 C. The state shall receive ten percent of any distribution, other than
9 distributions described in Subsection (B) of this Section, and any distributions made
10 to return an equity capital invested in the LEAD fund that is not eligible capital. The
11 state's distribution percentage shall increase to (1) twenty percent if less than eighty
12 percent, but more than sixty percent, of the jobs set forth in the LEAD fund's
13 business plan are created or retained, and (2) forty percent when sixty percent or less
14 of the jobs set forth in the LEAD fund's business plan are created or retained.

15 §3116. LEAD fund; decertification and forfeiture

16 A. The secretary shall review each annual report to ensure compliance with
17 the requirements for maintenance of certification, reporting and distributions as
18 provided in R.S.51:3114 and 3115, a material violation of which shall be grounds for
19 decertification of the LEAD fund. If the secretary determines that a LEAD fund is
20 not in compliance with the foregoing requirements, the secretary shall notify the
21 officers of the LEAD fund in writing that the LEAD fund may be subject to
22 decertification after the one-hundred-twentieth day after the date of mailing the
23 notice, unless the deficiencies are waived by te secretary or are corrected, and the
24 LEAD fund returns to compliance with law.

25 B. Decertification of a LEAD fund prior to its investment of at least fifty
26 percent of its eligible capital in eligible businesses shall cause the forfeiture of all tax
27 credits earned under this Chapter. Upon satisfaction of the requirement of R.S.
28 51:3114(A)(3), tax credits earned under this Chapter are no longer subject to
29 recapture or forfeiture.

1 C. Upon satisfaction of the requirements of either R.S. 51:3114(A)(3) or (4),
 2 a LEAD fund shall provide notice to the department and the department shall, within
 3 sixty days or receipt of such notice, either confirm that the LEAD fund has satisfied
 4 such requirement as of such date or provide notice of noncompliance and an
 5 explanation of any existing deficiencies. If the department does not provide such
 6 notification within sixty days, the LEAD fund shall be deemed to have met the
 7 requirement of R.S. 51:3114(A)(3) or (4). Except for distributions made pursuant
 8 to R.S.3115(C), a LEAD fund that has satisfied the requirement set forth in R.S.
 9 51:3114(A)(4) shall no longer be subject to the regulations hereunder.

10 §3117. Louisiana Entrepreneurial Assistance and Development Program;
 11 administration

12 The department shall maintain and interpret policy for, perform the
 13 regulatory and examination functions of, and provide for the implementation and
 14 administration of the Louisiana Entrepreneurial Assistance and Development
 15 Program. The department shall have the authority, subject to the Louisiana
 16 Administrative Procedure Act, to adopt rules concerning the implementation and
 17 regulation of the program and to issue advisory rulings, as requested, provided each
 18 advisory ruling is limited to the specific facts outlines in the advisory ruling request
 19 and may only be relied upon by the specific requesters of such ruling.

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)]

Ellington

HB No. 555

Abstract: Establishes the Louisiana Entrepreneurial Assistance and Development Program for tax credits against insurance premium tax for venture capital investors

Proposed law establishes the Louisiana Entrepreneurial Assistance and Development Program for tax credits against insurance premium tax for venture capital investors. The amount of the credit is equal to 75% of the amount of eligible investments. The tax credit must be taken in the year in which it is earned, it is transferrable and may not be carried forward.

Proposed law provides for application and certification of investors for participation in the program and receipt of tax credits.

Proposed law authorizes the department of economic development to administer the program.

(Adds 51:3110 through 3117)