

2019 Regular Session

SENATE BILL NO. 121

BY SENATOR LUNEAU

TAX/TAXATION. Provides premium tax credits for certain investments made in rural growth funds. (gov sig)

1 AN ACT

2 To enact R.S. 47:6016.2, relative to tax credits; to authorize a premium tax credit for rural
3 growth investments made by rural growth funds; to provide for definitions; to
4 provide for the amount of the credit; to provide for eligibility, application, usage, and
5 recapture of the credit; to require certain reports; to authorize the promulgation of
6 certain rules and regulations; to provide for requirements and limitations; to provide
7 for an effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:6016.2 is hereby enacted to read as follows:

10 **§6016.2. Louisiana rural jobs; premium tax credit**

11 **A. This Section shall be known and cited as the "Louisiana Rural Jobs**
12 **Act".**

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

16 **(1) "Affiliate" means an entity that directly, or indirectly through one**
17 **or more intermediaries, controls, is controlled by, or is under common control**

1 with another entity. For purposes of this Paragraph, an entity is "controlled by"
2 another entity if the controlling person holds, directly or indirectly, the majority
3 voting or ownership interest in the controlled person or has control over the
4 day-to-day operations of the controlled person by contract or by law.

5 (2) "Closing date" means the date on which a rural growth fund has
6 collected all amounts specified by Subparagraph (C)(6)(a) of this Section.

7 (3) "Department" means the Department of Economic Development.

8 (4) "Full-time employment position" means an employment position that
9 is filled and requires at least thirty-five hours of work per week or other period
10 of time generally accepted by custom, industry, or practice as full-time
11 employment.

12 (5) "Investment authority" means the amount stated on the notice issued
13 under Paragraph (C)(5) of this Section certifying the rural growth fund. At least
14 seventy-five percent of a rural growth fund's investment authority shall be
15 comprised of an amount equal to the authorized investor contributions.

16 (6) "Investor contribution" means an investment of cash in a rural
17 growth fund by a person with state premium tax liability that equals the amount
18 specified on a tax credit certificate issued by the department under
19 Subparagraph (C)(6)(b) of this Section that shall purchase an equity interest in
20 the rural growth fund or purchase, at par value or premium, a debt instrument
21 that has a maturity date at least five years from the closing date.

22 (7) "Jobs created" means the difference between either the average
23 number of full-time employment positions at a rural business in the preceding
24 calendar year or, if the initial growth investment occurred during the preceding
25 calendar year, the average number of full-time employment positions for the
26 months during which the initial rural growth investment was made through the
27 end of the preceding calendar year; and the number of full-time employment
28 positions at the rural business on the date of the initial rural growth investment.

29 (8) "Jobs retained" means the number of full-time employment positions

1 that existed before the initial growth investment and for which the rural
2 business's chief executive officer or similar officer certifies that the full-time
3 employment position would have been eliminated but for the initial rural
4 growth investment.

5 (9) "Principal business operations" of a business are located at the place
6 or places where at least sixty percent of its employees work or where employees
7 that are paid at least sixty percent of its payroll work. A business that has
8 agreed to relocate or hire employees using the proceeds of a rural growth
9 investment to establish its principal business operations in a rural area in the
10 state shall be deemed to have its principal business operations in this new
11 location provided it satisfies this definition within one hundred eighty days after
12 receiving the rural growth investment, unless the department agrees to a later
13 date.

14 (10) "Rural area" means all locations outside of census designated places
15 with a population greater than or equal to fifty thousand as of the latest
16 decennial census of the United States.

17 (11) "Rural business" means a business that, at the time of the initial
18 rural growth investment in the company by a rural growth fund, meets all of the
19 following criteria:

20 (a) Has fewer than one hundred employees.

21 (b) Has its principal business operations in one or more rural areas in
22 the state.

23 (c) Is engaged in industries assigned a North American Industrial
24 Classification System code within Sectors 11, 21, 23, 31 through 33, 42, 48, 49,
25 54, except 541110 through 541219, 56, 62, and 81 or, if not engaged in any of
26 these industries, the department determines that the investment will be
27 beneficial to the rural area and the economic growth of the state.

28 (d) Has, if such initial rural growth investment is a senior secured loan
29 or other type of loan customarily made by a commercial bank, delivered a

1 certification by its chief executive officer or similar officer that it sought and
2 was declined financing substantially similar to the initial growth investment
3 from a commercial bank to the rural growth fund prior to the initial growth
4 investment.

5 (12) "Rural growth fund" means an entity, or an entity with an affiliate,
6 that is a rural business investment company pursuant to 7 U.S.C. 2009cc or a
7 small business investment company pursuant to 15 U.S.C. 681 and is certified
8 by the department under Paragraph (C)(5) of this Section.

9 (13) "Rural growth investment" means any capital or equity investment
10 in a rural business or any loan to a rural business with a stated maturity of at
11 least one year after the date of issuance.

12 (14) "State premium tax liability" means any liability incurred by any
13 entity under the provisions of R.S. 22:831, 836, 838, or 842.

14 C.(1) Beginning October 1, 2019, the department shall accept
15 applications for approval as a rural growth fund. On a form prescribed by the
16 department, the application shall include all of the following:

17 (a) The total investment authority sought by the applicant.

18 (b) Evidence that:

19 (i) The applicant or an affiliate of the applicant is licensed as a rural
20 business investment company issued pursuant to 7 U.S.C. 2009cc and the
21 regulations and procedures thereunder, or as a small business investment
22 company issued pursuant to 15 U.S.C. 681 and the regulations and procedures
23 thereunder.

24 (ii) At least one principal in a rural business investment company or
25 small business investment company is, and has been for at least four years, an
26 officer or employee of the applicant or an affiliate of the applicant on the date
27 the application is submitted.

28 (iii) The applicant or affiliates of the applicant have invested at least one
29 hundred million dollars in nonpublic companies located in nonmetropolitan

1 counties as defined by the Office of Management and Budget within the Office
2 of the President of the United States on the basis of county or county-equivalent
3 units, exclusive of any investments made pursuant to the provisions of this
4 Section.

5 (c) An estimate of the number of jobs created and jobs retained in this
6 state because of the applicant's proposed rural growth investments.

7 (d) A business plan that includes a revenue impact assessment projecting
8 state and local tax revenue to be generated by the applicant's proposed rural
9 growth investments prepared by a nationally recognized third-party
10 independent economic forecasting firm using a dynamic economic forecasting
11 model that analyzes the applicant's business plan over the ten years following
12 the date the application is submitted to the department.

13 (e) A signed affidavit from each investor stating the amount of investor
14 contributions each investor commits to make.

15 (2) Within thirty days after receipt of a completed application containing
16 the information set forth in Paragraph (1) of this Subsection, the department
17 shall grant or deny the application. The department shall deem applications
18 received on the same day to have been received simultaneously. The allocation
19 of investment authority and investor contributions shall be on a first-come,
20 first-served basis. The department shall not approve more than one hundred
21 fifty million dollars in investment authority and not more than one hundred
22 twelve million and five hundred thousand dollars in investor contributions
23 under this Section over the life of the program. If requests for investment
24 authority exceed this limitation, the department shall proportionally reduce the
25 investment authority and the investor contributions for each approved
26 application as necessary to avoid exceeding the limit.

27 (3) The department shall deny an application for any of the following:

28 (a) The application is incomplete.

29 (b) The applicant does not satisfy the criteria of Subparagraph (1)(b) of

1 this Subsection.

2 (c) The revenue impact assessment submitted under Subparagraph (1)(d)
3 of this Subsection does not demonstrate that the applicant's business plan will
4 result in a positive economic impact on this state over a ten-year period that
5 exceeds the cumulative amount of tax credits that would be issued to the
6 applicant's investors.

7 (d) The combined investor contributions described in affidavits
8 submitted under Subparagraph (1)(e) of this Subsection do not equal at least
9 seventy-five percent of the total amount of investment authority sought.

10 (e) The department has already approved the maximum amount of
11 investment authority and investor contributions allowed under Paragraph (2)
12 of this Subsection.

13 (4) If the department denies an application for any reason other than
14 Subparagraph (3)(d) of this Subsection, the applicant may provide additional
15 information to the department to complete, clarify, or cure defects in the
16 application within fifteen days of the notice of denial for reconsideration and
17 determination. The department shall review and reconsider such applications
18 within thirty days before any pending application submitted after the original
19 submission date of the reconsidered application.

20 (5) The department shall not reduce the requested investment authority
21 or deny a rural growth fund application for reasons other than those described
22 in Paragraphs (2) and (3) of this Subsection. Upon approval of an application,
23 the department shall certify the applicant as a rural growth fund specifying the
24 amount of the applicant's investment authority, the investor contributions
25 required from each taxpayer that submitted an affidavit with the rural growth
26 fund's application, and the number of jobs created and jobs retained required
27 of the rural growth fund as prorated based on the investment authority
28 awarded to the rural growth fund.

29 (6)(a) Within sixty days of receiving the approval issued under

1 Paragraph (5) of this Subsection, the rural growth fund shall collect all investor
2 contributions and collect additional investments of cash that, when added to the
3 investor contributions, equal to at least the amount of the rural growth fund's
4 investment authority. At least ten percent of the rural growth fund's investment
5 authority shall be comprised of equity investments contributed by affiliates of
6 the rural growth fund, including employees, officers, and directors of such
7 affiliates. Within sixty-five days of receiving the approval issued under
8 Paragraph (5) of this Subsection, a rural growth fund shall send to the
9 department documentation sufficient to prove that the amounts described in
10 this Subparagraph have been collected.

11 (b) Upon receipt of the documentation required by Subparagraph (a) of
12 this Paragraph, the department shall provide a tax credit certificate to each
13 investor that made an investor contribution in the amount of the investor's
14 investor contribution.

15 (7) If the rural growth fund fails to fully comply with Subparagraph
16 (6)(a) of this Subsection, the rural growth fund's certification shall lapse and the
17 corresponding investment authority and investor contributions shall not count
18 toward the limits on the program size prescribed by Paragraph (2) of this
19 Subsection. The department shall first award lapsed investment authority pro
20 rata to each rural growth fund that was awarded less than the investment
21 authority for which it applied. A rural growth fund may allocate the associated
22 investor contribution authority to any of its investors with state premium tax
23 liability at its discretion. Any remaining investment authority may be awarded
24 by the department to new applicants.

25 D.(1) Any taxpayer that makes an investor contribution and receives a
26 tax credit certificate pursuant to Subparagraph (C)(6)(b) of this Section shall
27 be vested with an earned credit against state premium tax liability, subject to
28 the recapture provisions of Subsection E and Paragraph (G)(3) of this Section.
29 The amount of the credit shall be equal to the amount of the investor

1 contribution. Credits authorized pursuant to the provisions of this Section shall
2 first be applicable to the state premium tax liability of the investor that begins
3 in the taxable year containing the third anniversary of the closing date. No more
4 than one-fifth of the total amount of the credit shall be applied in each of the
5 taxable years beginning with the taxable year containing the third anniversary
6 of the closing date through the taxable year containing the seventh anniversary
7 of the closing date, exclusive of any carried forward amounts authorized
8 pursuant to Paragraph (2) of this Subsection.

9 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
10 the amount of the credit claimed by a taxpayer shall not exceed the amount of
11 such taxpayer's state premium tax liability for the tax year for which the credit
12 is claimed. Any amount of tax credit that the taxpayer does not claim in a
13 taxable year may be carried forward for use in future taxable years for a period
14 not to exceed ten years.

15 (3) The credit authorized pursuant to the provisions of this Section is
16 nonrefundable and shall not be sold, transferred, or allocated to any other
17 entity except that a credit may be sold, transferred, or allocated to an affiliate
18 that had state premium tax liability at the time of the submission of the
19 investor's affidavit included in the rural growth fund's application.

20 (4) A taxpayer claiming a credit under this Section shall submit a copy
21 of the tax credit certificate to the Department of Insurance with the taxpayer's
22 return for each taxable year for which the credit is claimed and a schedule
23 showing the credit utilization and remaining balance.

24 (5) No additional retaliatory tax shall be due as a result of the claiming
25 the credit under this Section.

26 E.(1) The department shall notify the Department of Insurance of the
27 need to recapture any tax credit allowed pursuant to this Section if any of the
28 following occur before a rural growth fund exits the program in accordance
29 with Paragraph (5) of this Subsection:

1 (a) The rural growth fund has not invested at least one hundred percent
2 of its investment authority in rural growth investments in this state within two
3 years of the closing date.

4 (b) The rural growth fund, after satisfying Subparagraph (1)(a) of this
5 Subsection, fails to maintain rural growth investments equal to at least one
6 hundred percent of its investment authority until the seventh anniversary of the
7 closing date. For purposes of this Subparagraph, an investment is "maintained"
8 even if it is sold or repaid so long as the rural growth fund reinvests an amount
9 equal to the capital returned or recovered from the original investment,
10 exclusive of any profits realized, in other rural growth investments in this state
11 within twelve months of the receipt of the capital. Amounts received
12 periodically by a rural growth fund shall be treated as continuously invested in
13 rural growth investments if the amounts are reinvested in one or more rural
14 growth investments by the end of the following calendar year. A rural growth
15 fund shall not be required to reinvest capital returned from rural growth
16 investments after the sixth anniversary of the closing date, and the rural growth
17 investments shall be considered held continuously by the rural growth fund
18 through the seventh anniversary of the closing date.

19 (c) The rural growth fund, before exiting the program in accordance
20 with Paragraph (5) of this Subsection, makes a distribution or payment that
21 results in the rural growth fund having less than one hundred percent of its
22 investment authority invested in rural growth investments in this state or
23 available for investment in rural growth investments or held in cash and other
24 marketable securities.

25 (d)(i) The rural growth fund makes a rural growth investment in a rural
26 business that directly, or indirectly through an affiliate, does any of the
27 following:

28 (I) Owns the rural growth fund, or an affiliate of or investor of the rural
29 growth fund.

1 **(II) Has the right to acquire an ownership interest in the rural growth**
2 **fund, or an affiliate of or investor in the rural growth fund.**

3 **(III) Makes a loan to the rural growth fund, or an affiliate of or investor**
4 **in the rural growth fund.**

5 **(IV) Makes an investment to the rural growth fund, or an affiliate of or**
6 **investor in the rural growth fund.**

7 **(ii) This Paragraph shall not apply to investments in publicly traded**
8 **securities by a rural business or an owner or affiliate of such rural business. For**
9 **purposes of this Subparagraph, a rural growth fund shall not be considered an**
10 **affiliate of a rural business solely because of its rural growth investment.**

11 **(2) For purposes of the investment amounts required by Subparagraphs**
12 **(a) and (b) of this Paragraph, a rural growth fund shall be allowed to take into**
13 **account up to five million dollars of rural growth investments per rural**
14 **business, including amounts invested in affiliates of the rural business. Any**
15 **amounts reinvested by a rural growth fund with the proceeds of repaid or**
16 **redeemed rural growth fund investments shall not be included in the five**
17 **million dollar cap.**

18 **(3) Before recapturing any tax credit certificates under this Subsection,**
19 **the department shall notify the rural growth fund of the reasons for the pending**
20 **revocation. The rural growth fund shall have ninety days from the date the**
21 **notice was received to correct any violation outlined in the notice to the**
22 **satisfaction of the department and avoid recapture of the tax credit certificate.**

23 **(4) If tax credit certificates are recaptured under this Subsection, the**
24 **associated investment authority and investor contributions shall not count**
25 **toward the limit on total investment authority and investor contributions**
26 **described by Paragraph (C)(2) of this Section. The department shall first award**
27 **reverted investment authority pro rata to each rural growth fund that was**
28 **awarded less than the requested investment authority for which it applied. Such**
29 **a rural growth fund may allocate the associated investor contribution authority**

1 to any taxpayer with state premium tax liability in its discretion. The
2 department may award any remaining investment authority to new applicants.

3 (5) On or after the seventh anniversary of the closing date, a rural
4 growth fund may apply to the department to exit the program and no longer be
5 subject to regulation. The department shall respond to the application within
6 thirty days of receipt of the request to exit the program. In evaluating the
7 application, there shall be a presumption that the rural growth fund is eligible
8 for exit if no tax credit certificates have been recaptured and the rural growth
9 fund has not received a notice of recapture that has not been cured pursuant to
10 Paragraph (3) of this Subsection. The department shall not unreasonably deny
11 an application to exit the program submitted in accordance with the provisions
12 of this Paragraph. If the application is denied, the notice of denial shall include
13 the reasons for the determination. A rural growth fund may not exit the
14 program unless it has made rural growth investments equal to at least one
15 hundred fifty percent of its investment authority.

16 (6) Upon exit from the program in accordance with Paragraph (5) of this
17 Subsection, a rural growth fund shall not make any distribution in excess of the
18 amount of its investor contributions until it first remits to the department a
19 payment equal to the product of its investor contributions and the difference
20 between one and a fraction, the numerator of which is the aggregate number of
21 jobs created and jobs retained reported annually to the department pursuant
22 to Subsection G(1)(d) and the denominator of which is the number of jobs
23 created and jobs retained set forth in the rural growth fund's certification
24 under Subsection C(5). No payment is due if the aggregate number of jobs
25 created and jobs retained equals or exceeds the amount specified in the rural
26 growth fund's certification.

27 (7) The department shall not recapture a tax credit certificate after a
28 rural growth fund exits from the program.

29 F. A rural growth fund, before making a rural growth investment, may

1 request from the department a written opinion as to whether the business in
2 which it proposes to invest satisfies the definition of a rural business. The
3 department, not later than the fifteenth business day after the date of receipt of
4 the request, shall notify the rural growth fund of its determination. If the
5 department fails to notify the rural growth fund by the fifteenth business day
6 of its determination, the business in which the rural growth fund proposes to
7 invest shall be considered a rural business.

8 G.(1) Each rural growth fund shall submit an annual report to the
9 department, the Senate Committee on Revenue and Fiscal Affairs, and the
10 House Committee on Ways and Means on or before the fifth business day after
11 each anniversary of the closing date. The report shall provide documentation
12 as to each rural growth investment and shall include all of the following:

13 (a) If not previously reported, a bank statement evidencing each rural
14 growth investment.

15 (b) If not previously reported, the name, location, and industry of each
16 rural business receiving a rural growth investment, including either the
17 determination letter set forth in Subsection F of this Section or evidence that the
18 business qualified as a rural business at the time the investment was made, and
19 the certification referred to in Subparagraph (B)(11)(d) of this Section if
20 applicable with respect to the rural growth investment.

21 (c) The number of full-time employment positions at the rural business
22 on the date of the initial rural growth investment and jobs retained as a result
23 of the initial growth investment.

24 (d) The number of jobs created and jobs retained, provided the number
25 of jobs retained shall not exceed the number of jobs retained reported in the
26 first annual report and such number of jobs retained shall be reduced in
27 subsequent annual reports if the full-time employment positions drop below the
28 number of jobs retained reported in Subparagraph (c) of this Paragraph.

29 (e) Any other information required by the department.

- (2) Sector 21 - Mining
- (3) Sector 23 - Construction
- (4) Sector 31-33 - Manufacturing
- (5) Sector 42 - Wholesale trade
- (6) Sector 48-49 - Transportation and Warehousing
- (7) Sector 54 - Professional, Scientific, and Technical Services, except those related to the legal and accounting professions
- (8) Sector 56 - Administrative and Support and Waste Management and Remediation Services
- (9) Sector 62 - Healthcare and Social Assistance
- (10) Sector 81 - Other Services, except Public Administration
- (11) Any other NAICS code if the department determines that the investment will be in the best interest of the rural area and economic growth of the state.

Proposed law defines a "rural growth fund" as an entity that is a "rural business investment company" pursuant to federal law and is determined by the Dept. of Economic Development as meeting the capitalization, job creation, and revenue impact assessment requirements of the program.

Proposed law defines the types of investments required for tax credit eligibility.

Proposed law authorizes a maximum of \$150 million of investment authority and \$112.5 million of investor contributions for certification and allocation for the purpose of earning tax credits. The department shall begin accepting applications on Oct. 1, 2019.

Proposed law provides that the allocation of investment authority and investor contributions by the department will be on a first-come, first-served basis. However, if requests received on the same day for investment authority exceed this limitation, the department shall proportionally reduce the investment authority and the investor contributions for each approved application.

Proposed law requires that investments eligible for the award of tax credits be approved by the Dept. of Revenue. If an applicant applies for approval as a rural growth fund, the department shall inform the entity within 30 days of application whether the application is approved or denied. In the case of a denial, the entity shall have the right to provide additional information regarding the application within 15 days of receipt of the denial.

Proposed law requires the collection of investments by the rural growth fund within 60 days of receiving approval.

Proposed law provides that the amount of the tax credit shall be equal to the amount of the investor contribution.

Proposed law authorizes credits to be used to reduce premium tax to be taken in an amount equal to 1/5 each year beginning with the third year through the seventh year of the investment. 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.

Proposed law does not allow transfer or allocation of the credits except to a related entity that had an insurance premium tax liability at the time the rural growth fund application was originally submitted.

Proposed law provides for conditions under which the Dept. of Insurance shall recapture tax credits, which include a failure to invest an amount equal to 100% of the purchase price of the investment within two years of the closing date, failure to maintain the investment through year seven, and making an unauthorized rural growth investment to a rural business.

Proposed law requires reporting by a rural growth fund to the Dept. of Economic Development, the Senate Committee on Revenue and Fiscal Affairs, and the House Committee on Ways and Means within five days of the second 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 the positions.

Proposed law authorizes a rural growth fund to apply to exit the program on or after the seventh anniversary of the closing date, but only if it has made rural growth investments equal to at least one hundred fifty percent of its investment authority.

Proposed law authorizes the state to receive a portion of any distribution when a rural growth fund exits the program if the rural growth fund fails to create or retain the number of jobs projected in the application.

Proposed law requires the Dept. of Economic Development 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 Dept. of Economic Development to promulgate rules to implement the provisions of proposed law in accordance with the APA.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 47:6016.2)