

2019 Regular Session

HOUSE BILL NO. 444

BY REPRESENTATIVE MCFARLAND

TAX CREDITS: Establishes the La. Rural Jobs Act Tax Credit Program and authorizes a tax credit for rural growth investments made by rural growth funds

1 AN ACT

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

11 A. The provisions of this Section shall be known and cited as the "Louisiana  
12 Rural Jobs Act".

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

16 (1) "Affiliate" means an entity that directly, or indirectly through one or  
17 more intermediaries, controls, is controlled by, or is under common control with  
18 another entity. For purposes of this Paragraph, an entity is "controlled by" another  
19 entity if the controlling person holds, directly or indirectly, the majority voting or

1 ownership interest in the controlled person or has control over the day-to-day  
2 operations of the controlled person by contract or by law.

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

5 (3) "Department" means the Department of Revenue.

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

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

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

19 (7) "Jobs created" means the difference between:

20 (a) The average number of full-time employment positions at a rural business  
21 in the preceding calendar year, or if the initial growth investment occurred during the  
22 preceding calendar year, the average number of full-time employment positions for  
23 the months during which the initial rural growth investment was made through the  
24 end of the preceding calendar year.

25 (b) The number of full-time employment positions at the rural business on  
26 the date of the initial rural growth investment.

27 (8) "Jobs retained" means the number of full-time employment positions that  
28 existed before the initial growth investment and for which the rural business' chief

1 executive officer or similar officer certifies that the full-time employment position  
2 would have been eliminated but for the initial rural growth investment.

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

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

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

17 (a) Has fewer than one hundred employees.

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

20 (c) Is engaged in industries assigned a North American Industrial  
21 Classification System code within Sectors 11, 21, 23, 31, 32, 33, 42, 48, 49, 54  
22 excluding Industry Groups 5411 and 5412, 56, 62, and 81 or, if not engaged in any  
23 of these industries, the department determines that the investment will be beneficial  
24 to the rural area and the economic growth of the state.

25 (d) If such initial rural growth investment is a senior secured loan or other  
26 type of loan customarily made by a commercial bank, has delivered a certification  
27 by its chief executive officer or similar officer that it sought and was declined  
28 financing substantially similar to the initial growth investment from a commercial  
29 bank to the rural growth fund prior to the initial growth investment.

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

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

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

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

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

14           (b) Evidence that:

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

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

23           (iii) The applicant or affiliates of the applicant have invested at least one  
24           hundred million dollars in nonpublic companies located in nonmetropolitan counties  
25           as defined by the Office of Management and Budget within the Office of the  
26           President of the United States on the basis of county or county-equivalent units,  
27           exclusive of any investments made pursuant to the provisions of this Section.

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

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

7           (e) A signed affidavit from each investor stating the amount of investor  
8           contributions each investor shall commit.

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

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

21          (a) The application is incomplete.

22          (b) The applicant does not satisfy the criteria of Subparagraph (1)(b) of this  
23          Subsection.

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

1           (d) The combined investor contributions described in affidavits submitted  
2           under Subparagraph (1)(e) of this Subsection do not equal at least seventy-five  
3           percent of the total amount of investment authority for which the applicant applied.

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

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

14          (5) The department shall not reduce the requested investment authority or  
15          deny a rural growth fund application for reasons other than those described in  
16          Paragraphs (2) and (3) of this Subsection. Upon approval of an application, the  
17          department shall certify the applicant as a rural growth fund specifying:

18                  (a) The amount of the applicant's investment authority.

19                  (b) The investor contributions required from each taxpayer that submitted  
20          an affidavit with the rural growth fund's application.

21                  (c) The number of jobs created and jobs retained required of the rural growth  
22          fund as prorated based on the investment authority awarded to the rural growth fund.

23                  (6)(a) The rural growth fund shall collect all investor contributions and  
24          collect additional investments of cash that, when added to the investor contributions,  
25          equal to at least the amount of the rural growth fund's investment authority, within  
26          sixty days of receiving the approval issued under Paragraph (5) of this Subsection.

27          At least ten percent of the rural growth fund's investment authority shall be  
28          comprised of equity investments contributed by affiliates of the rural growth fund,  
29          including employees, officers, and directors of such affiliates. A rural growth fund

1        shall send to the department documentation sufficient to prove that the amounts  
2        required have been collected, within sixty-five days of receiving the approval issued  
3        under Paragraph (5) of this Subsection.

4                (b) The department shall provide a tax credit certificate to each investor that  
5        made an investor contribution in the amount of the investor's investor contribution,  
6        upon receipt of the documentation required by Subparagraph (a) of this Paragraph.

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

16               D.(1) Any taxpayer that makes an investor contribution and receives a tax  
17       credit certificate pursuant to Subparagraph (C)(6)(b) of this Section shall be vested  
18       with an earned credit against state premium tax liability, subject to the recapture  
19       provisions of Subsection (E) and Paragraph (G)(3) of this Section. The amount of  
20       the credit shall be equal to the amount of the investor contribution. Credits  
21       authorized pursuant to the provisions of this Section shall first be applicable to the  
22       state premium tax liability of the investor that begins in the taxable year containing  
23       the second anniversary of the closing date. No more than one-fifth of the total  
24       amount of the credit shall be applied in each of the taxable years beginning with the  
25       taxable year containing the third anniversary of the closing date through the taxable  
26       year containing the seventh anniversary of the closing date, exclusive of any carried  
27       forward amounts authorized pursuant to Paragraph (2) of this Subsection.

28               (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the  
29       amount of the credit claimed by a taxpayer shall not exceed the amount of such

1 taxpayer's state premium tax liability for the tax year for which the credit is claimed.

2 Any amount of tax credit that the taxpayer does not claim in a taxable year may be  
3 carried forward for use in future taxable years for a period not to exceed ten years.

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

9 (4) A taxpayer claiming a credit under this Section shall submit a copy of the  
10 tax credit certificate to the Department of Insurance with the taxpayer's return for  
11 each taxable year for which the credit is claimed.

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

14 E.(1) The department shall recapture any tax credit allowed pursuant to this  
15 Section if any of the following occur before a rural growth fund exits the program  
16 in accordance with Paragraph (5) of this Subsection:

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

20 (b) The rural growth fund, after satisfying Subparagraph (1)(a) of this  
21 Subsection, fails to maintain rural growth investments equal to at least one hundred  
22 percent of its investment authority until the seventh anniversary of the closing date.  
23 For the purposes of this Subparagraph, an investment is "maintained" even if it is  
24 sold or repaid so long as the rural growth fund reinvests an amount equal to the  
25 capital returned or recovered from the original investment, exclusive of any profits  
26 realized, in other rural growth investments in this state within twelve months of the  
27 receipt of the capital. Amounts received periodically by a rural growth fund shall be  
28 treated as continuously invested in rural growth investments if the amounts are  
29 reinvested in one or more rural growth investments by the end of the following

1 calendar year. A rural growth fund shall not be required to reinvest capital returned  
2 from rural growth investments after the sixth anniversary of the closing date, and the  
3 rural growth investments shall be considered held continuously by the rural growth  
4 fund through the seventh anniversary of the closing date.

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

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

12 (I) Owns the rural growth fund, or an affiliate of or investor of the rural  
13 growth fund.

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

16 (III) Makes a loan to the rural growth fund, or an affiliate of or investor in  
17 the rural growth fund.

18 (IV) Makes an investment to the rural growth fund, or an affiliate of or  
19 investor in the rural growth fund.

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

24 (2) For purposes of the investment amounts required by Subparagraphs  
25 (1)(a) and (b) of this Subsection, a rural growth fund shall be allowed to take into  
26 account up to five million dollars of rural growth investments per rural business,  
27 including amounts invested in affiliates of the rural business. Any amounts  
28 reinvested by a rural growth fund with the proceeds of repaid or redeemed rural  
29 growth fund investments shall not be included in the five million dollar cap.

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

6           (4) If tax credit certificates are recaptured under this Subsection, the  
7           associated investment authority and investor contributions shall not count toward the  
8           limit on total investment authority and investor contributions described by Paragraph  
9           (C)(2) of this Section. The department shall first award reverted investment  
10          authority pro rata to each rural growth fund that was awarded less than the requested  
11          investment authority for which it applied. Such a rural growth fund may allocate the  
12          associated investor contribution authority to any taxpayer with state premium tax  
13          liability in its discretion. The department may award any remaining investment  
14          authority to new applicants.

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

27          (6) Upon exit from the program in accordance with Paragraph (5) of this  
28          Subsection a rural growth fund shall not make any distribution in excess of the  
29          amount of its investor contributions until it first remits to the department a payment

1 equal to the product of its investor contributions and the difference between one and  
2 a fraction, the numerator of which is the aggregate number of jobs created and jobs  
3 retained reported annually to the department pursuant to Subsection G(1)(d) and the  
4 denominator of which is the number of jobs created and jobs retained set forth in the  
5 rural growth fund's certification under Subsection C(5). No payment is due if the  
6 aggregate number of jobs created and jobs retained equals or exceeds the amount  
7 specified in the rural growth fund's certification.

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

10 F. A rural growth fund, before making a rural growth investment, may  
11 request from the department a written opinion as to whether the business in which  
12 it proposes to invest satisfies the definition of a rural business. The department, not  
13 later than the fifteenth business day after the date of receipt of the request, shall  
14 notify the rural growth fund of its determination. If the department fails to notify the  
15 rural growth fund by the fifteenth business day of its determination, the business in  
16 which the rural growth fund proposes to invest shall be considered a rural business.

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

22 (a) A bank statement evidencing each rural growth investment.

23 (b) The name, location, and industry of each rural business receiving a rural  
24 growth investment, including either the determination letter set forth in Subsection  
25 F of this Section or evidence that the business qualified as a rural business at the time  
26 the investment was made, and the certification referred to in Subsection (B)(11)(d)  
27 if applicable with respect to the rural growth investment.

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

4           (d) The number of jobs created and jobs retained, provided the number of  
5           jobs retained shall not exceed the number of jobs retained reported in the first annual  
6           report and such number of jobs retained shall be reduced in subsequent annual  
7           reports if the full-time employment positions drop below the number of jobs retained  
8           reported in Subparagraph (c) of this Paragraph.

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

10           (2) The rural growth fund shall not be required to provide the annual report  
11           set forth in Paragraph (1) of this Subsection for rural growth investments that have  
12           been redeemed or repaid but shall provide this information if the information is  
13           available.

14           (3) In the event a report required by this Subsection is not timely submitted,  
15           tax credits claimed by a taxpayer pursuant to this Section shall be disallowed until  
16           the required report has been submitted.

17           H.(1) The department may promulgate rules and regulations in accordance  
18           with the Administrative Procedure Act to implement the provisions of this Section.

19           (2) The department shall issue all forms and notices in accordance with the  
20           provisions of this Section.

21           I. The department shall notify the Department of Insurance of the name of  
22           any insurance company allocated tax credits pursuant to the provisions of this  
23           Section and the amount of the credits.

24           Section 2. This Act shall become effective upon signature by the governor or, if not  
25 signed by the governor, upon expiration of the time for bills to become law without signature  
26 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
27 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
28 effective on the day following such approval.

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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 444 Original

2019 Regular Session

McFarland

**Abstract:** Establishes the "La. Rural Jobs Act" and allows a premium tax credit for investment made in certain rural businesses. The maximum amount of investment authority permitted by the Dept. of Revenue is \$150 million and the maximum amount of investor contributions is capped at \$112,500,000 for certification and allocation of tax credits.

Present law taxes insurers based on the amount of premiums, known as "premium tax."

Proposed law establishes the "La. Rural Jobs Act" for purposes of a tax credit which may be claimed against insurance premium tax. Eligibility for the credit is based on the investment of private capital in a rural business located in the state.

Proposed law defines "rural business" as a business with fewer than 100 employees, which maintains its principal operations in one or more rural areas of the state, and is engaged in a business with a NAICS code of: Sector 11- Agriculture, Forestry, Fishing, and Hunting, Sector 21- Mining, Sector 23- Construction, Sector 31-33-Manufacturing, Sector 42- Wholesale trade, Sector 48-49- Transportation and Warehousing, Section 54- Professional, Scientific, and Technical Services, excluding Legal Services and Accounting, Tax Preparation, Bookkeeping, and Payroll Services, Sector 56- Administrative and Support and Waste Management and Remediation Services, Sector 62- Health Care and Social Assistance, and Sector 81- Other Services except Public Administration.

Proposed law defines a "rural growth fund" as an entity that is a rural business investment company pursuant to 7 U.S.C. 2009cc or a small business investment company pursuant to 15 U.S.C. 681 and certified by the Dept. of Revenue.

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

Proposed law authorizes a maximum of \$150 million of investment authority and \$112,500,000 of investor contributions for certification and allocation for the purpose of earning tax credits. The department shall begin accepting application on Oct. 1, 2019.

Proposed law requires that investments eligible for the award of tax credits be certified 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 certified or denied. In the case of denial, the entity shall have the right to provide additional information regarding the application within 15 days of receipt of the denial.

Proposed law provides that the amount of the tax credit shall be equal to the investor contribution and shall be allowed to be taken in an amount equal to 1/5 each year beginning with the 3rd year through the 7th 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. The credit can only be sold, transferred, or allocated to a related entity that has an insurance premium tax liability at the time the rural growth fund application was originally submitted.

Proposed law provides for the Dept. of Revenue to recapture any tax credit if the rural growth fund exits the program when the rural growth fund has not invested 100% of its investment authority in investments in La. within 2 years of the closing date, fails to

maintain investments equal to at least 100% of its investment authority until the 7<sup>th</sup> anniversary of the closing date, makes a distribution or payment that results in the rural growth fund having less than 100% of its investment authority invested in rural growth investments in the state or available for investment in rural growth investments or held in case or other marketable securities, or makes an investment in certain rural business.

Proposed law requires reporting by each rural growth fund to the Dept. of Revenue, the House Committee on ways and Means, and the senate Committee on Revenue and Fiscal Affairs within 5 days of each anniversary closing date.

Proposed law authorize a rural growth fund to apply to exit the program on or after the seventh anniversary of the closing date.

Proposed 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 Dept. of Revenue to promulgate rules to implement the provisions of proposed law in accordance with the Administrative Procedure Act.

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

(Adds R.S. 47:6016.2)