

Regular Session, 2011

SENATE BILL NO. 265

BY SENATOR RISER

ECONOMIC DEVELOPMENT. Provides relative to premium tax credits under the Louisiana Entrepreneurial Assistance and Development (LEAD) program. (8/15/11)

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. 51:3121 through 3133, relative to the Louisiana
4 Entrepreneurial Assistance and Development program (LEAD); to create the
5 program; to provide for a tax reduction for investors who make investments of
6 eligible capital under the program; to provide for approval of LEAD funds by the
7 department of economic development and to establish criteria for such approval; to
8 provide for the recovery of certain administrative costs; to provide criteria for issuers
9 in which investments will be made; 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. Investment tax credit**

13 **A. An investor who makes an investment of eligible capital pursuant to**
14 **R.S. 51:3121, et seq., shall, in the year that the legislative auditor provides**
15 **written certification to the secretary of the Louisiana Department of Economic**
16 **Development that the investment has achieved revenue neutrality, earn a vested**

1 premium tax credit equal to seventy-five percent of the amount of the
2 investment. The premium tax credit shall be available for but not limited to,
3 taxes charged on insurance premiums under R.S. 22:831, 836, 838, and 842.
4 Notwithstanding any other provision of law to the contrary, the premium tax
5 credit shall not be available for taxes charged on insurance premiums under
6 R.S. 22:345, 439, 833, 835, 837, and 1476.

7 B. In any one taxable year, no more than twenty-five percent of the total
8 premium tax credit earned with respect to a particular investment described in
9 Subsection A of this Section may be used, provided that:

10 (1) An insurer may not utilize credits in any taxable year in excess of its
11 premium tax liability for such taxable year.

12 (2) The premium tax credits shall not initially be applicable against
13 premium tax liability generated in any calendar year until the third calendar
14 year after the year in which the investment of eligible capital was made
15 pursuant to R.S. 51:3121, et seq.

16 (3) The premium tax credit shall not be applicable against any estimated
17 premium tax payments due prior to April 15, 2015.

18 C. Subject to the limitations in Paragraph (B)(1) of this Section,
19 premium tax credits available under this Section may be carried forward for
20 use in future years.

21 D.(1) Any investor who holds a premium tax credit described in this
22 Section shall be allowed to transfer such credits to any insurance company
23 subject to the forfeiture provisions of R.S. 51:3121, et seq. Within thirty days
24 after the transfer of tax credits, the original holder of the tax credits shall notify
25 the department in writing of all of the following information:

26 (a) The name of the new holder of the tax credits.

27 (b) The amount of tax credits transferred.

28 (c) The price of such tax credits.

29 (d) The date the transfer occurred.

1 (e) The tax identification number of the transferee.

2 (f) The remaining balance of credits held by the transferor.

3 (2) In the event such notice is not received by the Department of
4 Insurance within the thirty-day period, the transfer of sale shall be void.

5 Section 2. Chapter 55 of Title 51, comprised of R.S. 51:3121 through 3133 is hereby
6 enacted to read as follows:

7 CHAPTER 55. LOUISIANA ENTREPRENEURIAL

8 ASSISTANCE AND DEVELOPMENT

9 §3121. Short title

10 This Chapter may be cited as the "Louisiana Entrepreneurial Assistance
11 and Development" program.

12 §3122. Findings

13 A. The legislature recognizes the need to bring venture and expansion
14 capital to the entrepreneurs of Louisiana to combat the current economic
15 downturn and resulting difficulties in securing capital from traditional sources.

16 B. The legislature further finds that to ensure the Louisiana-based
17 development of the small and medium sized businesses that have traditionally
18 created the vast majority of new jobs nationwide, it is in the public interest of
19 the state to enact the Louisiana Entrepreneurial Assistance and Development
20 program (LEAD) to provide an incentive to attract venture and expansion
21 capital to eligible businesses.

22 §3123. Definitions

23 As used in this Chapter, the following terms shall have the following
24 meanings, unless the context clearly indicates otherwise:

25 (1) "Allocation date" means the date a LEAD fund receives an
26 investment of eligible capital equaling the amount of eligible capital allocated
27 to its investors pursuant to this Chapter.

28 (2) "Department" means the Louisiana Department of Economic
29 Development.

1 **(3) "Eligible business" means a business to which all of the following**
2 **apply:**

3 **(a) At the time of a LEAD fund's initial investment therein, meets all of**
4 **the following criteria:**

5 **(i) A business which employs one hundred or fewer full-time employees.**

6 **(ii) A business which has at least eighty percent of its employees**
7 **domiciled in Louisiana or at least eighty percent of its payroll paid to employees**
8 **domiciled in Louisiana.**

9 **(iii) A business that is not engaged in any of the following: retail sales,**
10 **real estate development, gaming, natural resource extraction or exploration,**
11 **insurance, banking or lending or the provision of professional services provided**
12 **by accountants, lawyers, or physicians.**

13 **(b) A business which has either a net worth of less than five million**
14 **dollars at the time of such investment or had a net income of fifteen million**
15 **dollars or less in the fiscal year immediately preceding such investment.**

16 **(4) "Eligible capital" means an investment of cash by an investor in a**
17 **LEAD fund that fully funds the purchase price of an equity interest in the**
18 **LEAD fund or a debt instrument issued by a LEAD fund, at par value or a**
19 **premium, that meets all of the following criteria:**

20 **(a) Has an original maturity date at least five years after the date of**
21 **issuance.**

22 **(b) Has a repayment schedule that is not faster than a level principal**
23 **amortization over five years.**

24 **(c) Has no interest, distribution or payment features tied to the**
25 **profitability or to the success of the investments of the LEAD fund until all of**
26 **the requirements of R.S. 51:3130(A) have been satisfied.**

27 **(5) "LEAD fund" means a Louisiana partnership, corporation, trust or**
28 **limited liability company, whether organized on a profit or non-profit basis that**
29 **meets all of the following criteria:**

1 (a) Fund is managed by at least two principals or persons domiciled in
2 Louisiana that have at least five years of experience each in managing venture
3 capital or private equity funds, with at least fifteen million dollars of such funds
4 having been invested by persons that are unaffiliated with such principals or
5 persons.

6 (b) Fund has received an equity investment of capital other than eligible
7 capital equal to at least two hundred and fifty thousand dollars.

8 (c) Fund is not, or will not be after the receipt of eligible capital,
9 controlled by or under common control with one or more insurance companies.

10 The definition criteria contained in this Subparagraph do not preclude an
11 insurance company from exercising its legal rights and remedies, including
12 interim management of a LEAD fund with respect to a LEAD fund that is in
13 default of its statutory or contractual obligations to the insurance company or
14 establishing controls to ensure that the LEAD fund satisfies the requirements
15 of this Chapter. An investment of eligible capital shall not be deemed to result
16 in insurance company control unless such investment exceeds forty million
17 dollars with respect to any one investor.

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

22 (7) "Revenue neutrality" means that the legislative auditor provides
23 written certification to the secretary that the cost to the state of the premium tax
24 credit provided to the investor pursuant to R.S. 22:832.1 will be offset by the
25 revenue to be received by the state from the investments made in eligible
26 businesses by the LEAD fund which received such investor's investment as
27 provided for in the revenue impact assessment filed with the LEAD fund's
28 application as provided for in R.S. 51:3125(A)(6).

29 (8) "Secretary" means the secretary of the Louisiana Department of

1 **Economic Development.**

2 **§3124. Premium tax credits**

3 **An investor who makes an investment of eligible capital in a LEAD fund**
4 **that is approved by the department pursuant to R.S. 51:3125 shall earn a vested**
5 **premium tax credit pursuant to R.S. 22:832.1 in the year when the legislative**
6 **auditor provides written certification to the secretary that the investment will**
7 **achieve revenue neutrality. The premium tax credit is earned and vested in**
8 **such year but is subject to the rules on utilization set forth in R.S. 22:832.1 and**
9 **the forfeiture provisions of R.S. 51:3131.**

10 **§3125. Application for certification**

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**
13 **capital and tax credits under this Section. Each application shall contain all of**
14 **the following information:**

15 **(1) The amount of eligible capital the applicant proposes to raise.**

16 **(2) Evidence that the applicant satisfies the requirements for a LEAD**
17 **fund pursuant to R.S. 51:3123(5)(b).**

18 **(3) An affidavit by each investor committing to an investment of eligible**
19 **capital.**

20 **(4) A business plan detailing all of the following:**

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

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

26 **(c) The types of investments the applicant will make, including but not**
27 **limited to debt, equity, convertible debt or debt with equity-like features.**

28 **(5) A revenue impact assessment prepared by an independent third**
29 **party contracted by the department and paid for by the applicant**

1 demonstrating that the applicant's investments, if made in accordance with its
2 business plan, will have a positive or neutral revenue impact on the state taking
3 into account the amount and timing of tax credits earned by investors of eligible
4 capital in the LEAD fund and the match of one hundred percent of the eligible
5 capital invested by the applicant, which assessment shall include the applicant's
6 estimate of the number of jobs that will be created or retained as a result of the
7 applicant's investments and matching investments.

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

16 B.(1) Not later than the thirtieth day after the date an application for
17 certification is filed, the secretary shall do either one of the following:

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

20 (b) Refuse to issue the certification and communicate in detail to the
21 applicant the grounds for the refusal.

22 (2) If an applicant submits an amended application within fifteen days
23 of receipt of refusal from the department, the department shall have fifteen
24 days from the receipt of such amended application by which to communicate its
25 approval or refusal of such amended application to the applicant.

26 C.(1) Applications for tax credits pursuant to this Section shall be
27 accepted and approved on a first-come, first-served basis with all applications
28 received on the same date deemed to be received simultaneously.

29 (2) The secretary may not allocate more than two hundred million in

1 eligible capital under this Chapter.

2 (3) If applicants for tax credits received by the department on any date
3 exceed the total amount of approval authority remaining under this Chapter on
4 such date, the eligible capital and associated tax credits shall be allocated on a
5 per applicant basis with each applicant being allocated eligible capital and
6 associated tax credits equal to the total amount of requests received for that day
7 divided by the total amount of applicants filing applications on such date that
8 were approved. If the allocation results in one or more applicants receiving an
9 allocation in excess of the amount that was requested, such excess shall be
10 reallocated to the remaining applicants from that date on an equal basis until
11 the entirety of the allocation has been fully distributed. All applicants that
12 share common management or are under common control, whether the
13 management or control is accomplished directly or indirectly, shall be treated
14 as a single applicant.

15 D. Any applicant who receives an allocation of eligible capital shall bear
16 any cost, not to exceed fifteen thousand dollars per fiscal year for each
17 applicant, which is allocated to it by the secretary to ensure that all costs of the
18 Louisiana Department of Economic Development associated with administering
19 the program are reimbursed. The secretary shall allocate such costs based upon
20 the proportion that the applicant's allocation of eligible capital bears to the total
21 amount of eligible capital allocated. The amounts collected by the secretary
22 shall be appropriated to the Louisiana Department of Economic Development.

23 §3126. Report upon receipt of eligible capital

24 Each LEAD fund shall report the following items to the secretary:

25 (1) The name of each investor from whom eligible capital was received,
26 including the investor's tax identification number.

27 (2) The amount of eligible capital received from each investor.

28 (3) The date on which the eligible capital was received. If a LEAD fund
29 does not receive an investment of eligible capital equaling the amount of eligible

1 capital allocated to it pursuant to R. S. 51:3125(B) prior to the fifth business day
2 after receipt of certification, the LEAD fund shall notify the secretary by
3 overnight common carrier delivery service and that portion of eligible capital
4 allocated to the investor shall be forfeited. Any forfeited eligible capital shall
5 be reallocated pursuant to R.S. 51:3125, provided that if such forfeited eligible
6 capital was subject to an allocation in accordance with R.S. 51:3125(C), it shall
7 be reallocated first to investors in the other LEAD funds affected by such
8 allocation.

9 §3127. Department approval of investments in eligible businesses; eligible
10 businesses

11 A.(1) Prior to making any initial investment in a potential eligible
12 business, a LEAD fund shall request a written opinion from the department as
13 to whether the business in which it proposes to invest is an eligible business,
14 including whether such investment is consistent with the LEAD fund's business
15 plan and satisfies the requirement of R.S. 51:3130(A)(2).

16 (2) The department shall have fifteen days either to grant the written
17 opinion or to deny the request, in which case it shall give the reasons for its
18 denial.

19 (3) If the department fails to respond within the fifteen-day period set
20 forth above, the proposed investment shall be deemed to be made in an eligible
21 business that is consistent with the LEAD fund's business plan and that satisfies
22 the requirement of R.S. 51:3130(A)(2) if a written opinion was requested as to
23 satisfaction of that requirement.

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

27 §3128. Maintenance of certification

28 To maintain certification, a LEAD fund shall accomplish all of the
29 following items:

1 (1) Comply with the investment parameters set forth in its business plan,
2 provided a LEAD fund may apply to the secretary to amend its business plan
3 based on unavoidable or reasonably unanticipated changes to various
4 conditions, including but not limited to the general economic climate of the state
5 of particular sectors of the economy, technological advances and high
6 employment and revenue growth opportunities, with approval for such changes
7 not to be unreasonably withheld by the secretary.

8 (2) Invest twenty-five percent of its eligible capital in eligible businesses
9 by the second anniversary of its allocation date.

10 (3) Invest fifty percent of its eligible capital in eligible businesses by the
11 fourth anniversary of its allocation date.

12 (4) Invest one hundred percent of its eligible capital in eligible businesses
13 by the tenth anniversary of its allocation date and satisfy the requirement of
14 R.S. 51:3130(A)(2). A LEAD fund shall invest eligible capital only in eligible
15 businesses, bank deposits, certificates of deposit or other debt securities issued
16 or guaranteed by investment-grade issuers or money market, mutual or
17 exchange traded funds whose investments are limited to the foregoing.

18 §3129. Annual reporting

19 Not later than January thirty-first annually, each LEAD fund shall
20 report to the secretary all of the following items:

21 (1) The amount of eligible capital remaining at the end of the preceding
22 year to be invested in eligible businesses and, with respect to each eligible
23 business, its location and two-digit North American Industrial Classification
24 System code.

25 (2) The percentage of eligible capital invested in businesses that meet the
26 requirement of R.S. 51:3130(A)(2).

27 (3) All distributions made by the LEAD fund in the preceding year.

28 (4) The number of jobs created or retained as a result of the LEAD
29 fund's investments in eligible businesses during the preceding year. Each

1 LEAD fund shall provide to the secretary an annual audited financial statement
2 not later than June thirtieth of each year.

3 §3130. Distributions

4 A. To make a distribution or payment, other than those listed in
5 Subsection B of this Section, a LEAD fund shall have accomplished all of the
6 following items:

7 (1) Invested one hundred percent of its eligible capital in eligible
8 businesses.

9 (2) Invested at least fifty percent of its eligible capital in eligible
10 businesses that are either one of the following:

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

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

18 (3) The LEAD fund shall have achieved a match amount, that when
19 added to any investments in eligible businesses made by the LEAD fund in
20 excess of one hundred percent of its eligible capital, equals at least one hundred
21 percent of the LEAD fund's eligible capital.

22 B. At any time, a LEAD fund is authorized to make any one of the
23 following items:

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

29 (2) Payments of interest and principal on the debt of the LEAD fund,

1 subject to the limitation of R.S. 51:3123(4)(c).

2 (3) Payments related to the reasonable costs and expenses of forming,
3 syndicating, managing, and operating the fund, provided the distribution or
4 payment is not made directly or indirectly to an investor that has invested
5 eligible capital in the LEAD fund, including all of the following items:

6 (a) Reasonable and necessary fees paid for professional services,
7 including legal and accounting services, related to the formation and operation
8 of the LEAD fund.

9 (b) An annual management fee in an amount that does not exceed two
10 and one-half percent of the eligible capital of the LEAD fund, provided that a
11 LEAD fund may not pay management fees after the tenth anniversary of its
12 allocation date if it has not met the requirements set forth in R.S. 51:3128(4).

13 C. The state shall receive ten percent of any distribution, other than
14 distributions described in Subsection B of this Section and distributions made
15 to return any equity capital invested in the LEAD fund that is not eligible
16 capital. The state's distribution percentage shall increase to either of the
17 following:

18 (1) Twenty percent if less than eighty percent and more than sixty
19 percent of the jobs set forth in the LEAD fund's business plan are created and
20 retained.

21 (2) Forty percent when sixty percent or less of the jobs set forth in the
22 LEAD fund's business plan are created or retained.

23 §3131. Decertification and forfeiture

24 A.(1) The secretary shall review each annual report to ensure
25 compliance with R.S. 51:3128, 3129, and 3130.

26 (2) A material violation of R.S. 51:3128, 3129, or 3130 shall be grounds
27 for decertification of a LEAD fund.

28 (3) If the secretary determines that a LEAD fund is not in compliance
29 with R.S. 51:3128, 3129, or 3130, the secretary shall notify the officers of the

1 LEAD fund, in writing, that the LEAD fund may be subject to decertification
2 after the one hundred twentieth day after the date of mailing of the notice,
3 unless the deficiencies are waived by the secretary or are corrected and the
4 LEAD fund returns to compliance.

5 B. Decertification of a LEAD fund prior to its investment of at least fifty
6 percent of its eligible capital in eligible businesses shall cause the forfeiture of
7 all tax credits earned under this Chapter. Upon satisfaction of the requirement
8 of R.S. 51:3128(3), tax credits earned under this Chapter are no longer subject
9 to recapture or forfeiture.

10 C.(1) Upon satisfying the requirements of R.S. 51:3128(3) and (4), a
11 LEAD fund shall provide notice to the department. The department shall,
12 within sixty days of receipt of such notice, either confirm that the LEAD fund
13 has satisfied such requirement as of such date or provide notice of
14 noncompliance and an explanation of any existing deficiencies.

15 (2) If the department does not provide such notification within sixty
16 days, the LEAD fund shall be deemed to have met all requirements of R.S.
17 51:3128(3) and (4).

18 (3) Except for distributions made pursuant to R.S. 51:3130(C), a LEAD
19 fund that has satisfied the requirement set forth in R.S. 51:3128(4) shall no
20 longer be subject to regulation under this Chapter.

21 §3132. Administration of the program

22 A. The department shall be responsible for all of the following:

23 (1) Maintaining and interpreting policy pursuant to the provisions of
24 this Chapter.

25 (2) Performing the regulatory and examination functions pursuant to
26 the provisions of this Chapter.

27 (3) Providing for the implementation and administration of the
28 Louisiana Entrepreneurial Assistance and Development program.

29 B.(1) The department shall have the authority to adopt, in accordance

1 with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.,
 2 rules and regulations concerning the implementation and regulation of the
 3 Louisiana Entrepreneurial Assistance and Development program.

4 (2) The department shall issue advisory rulings, as requested, provided
 5 that each advisory ruling is limited to the specific facts outlined in the request
 6 and may be relied upon only by the specific requestor of the ruling.

7 §3133. Report to legislative committees

8 The department shall file an annual report with the House Committee
 9 on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs
 10 regarding the manner in which all LEAD funds which have received eligible
 11 capital have invested such capital; the manner in which eligible businesses have
 12 the investments been made and the amount thereof; the jobs created by and the
 13 success or failure of such eligible businesses; the share received by the state of
 14 LEAD fund distributions; and whether the investment tax credit has achieved
 15 "revenue neutrality", that is, the cost to the state of the credit is offset by
 16 revenue received by the state.

The original instrument was prepared by Mary Dozier O'Brien. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jay Lueckel.

DIGEST

Riser (SB 265)

Proposed law creates the Louisiana Entrepreneurial Assistance and Development (LEAD) Program which grants a tax reduction to insurance companies under certain circumstances provided the legislative auditor certifies in writing that the cost to the state of the premium tax credit will be offset by the revenue to be received by the state from the investments made in eligible businesses by the LEAD fund.

Proposed law provides definitions, including the definition of revenue neutrality.

Proposed law provides with respect to premium tax credits, applications for certification as a LEAD fund, and applications for tax credits.

Proposed law provides for information to be communicated to the secretary of the Louisiana Department of Economic Development once an entity has received eligible capital.

Proposed law provides that a LEAD fund shall not invest more than 15% of its eligible capital in any one eligible business, without the permission of the secretary of the Louisiana Department of Economic Development.

Proposed law provides relative to a fund maintaining its compliance with the conditions set forth for LEAD funds.

Proposed law provides that the Louisiana Department of Economic Development shall be responsible for the administration of the program. Requires that applicants who receive an allocation of eligible capital under the program shall bear any cost, not to exceed \$15,000 per fiscal year, to cover the administrative costs of the department of economic development. Such monies shall be appropriated to the department.

Effective August 15, 2011.

(Adds R.S. 22:832.1 and R.S. 51:3121-3132)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill.

1. Requires DED to file an annual report with the House Ways and Means and Revenue and Fiscal Affairs committees regarding the manner in which all LEAD Funds which have received eligible capital have invested such capital; in which eligible businesses have the investments been made and the amount thereof; the jobs created by and the success or failure of such eligible businesses; the share received by the state of LEAD Fund distributions; and whether the investment tax credit has achieved "revenue neutrality", that is, the cost to the state of the credit is offset by value received by the state.

Committee Amendments Proposed by Senate Committee on Finance to the engrossed bill.

1. Requires the legislative auditor to certify when eligible capital investments under the program achieve revenue neutrality.
2. Defines revenue neutrality as the certification by the legislative auditor to the secretary of the department of economic development that the cost to the state of the premium tax credit will be offset by the revenue to be received by the state from the investments made in eligible businesses by the LEAD fund.
3. Requires that applicants who receive an allocation of eligible capital under the program shall bear any cost, not to exceed \$15,000 per fiscal year, to cover the administrative costs of the department of economic development. Such monies shall be appropriated to the department.