Regular Session, 2011

HOUSE BILL NO. 629

BY REPRESENTATIVE ELLINGTON

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

AN ACT

To enact R.S. 22:832.1 and Chapter 55 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:3111 through 3117, relative to tax credits; to establish the Louisiana Entrepreneurial Assistance and Development Program to provide a credit against insurance premium tax for certain venture capital investors; to provide for administration of the program by the Department of Economic Development; to provide for applications and to establish criteria for approval; to establish criteria for investments; to provide for reporting; to provide for other requirements and limitations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

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

A. There is hereby authorized a tax credit against premium tax for an investor that makes an investment of eligible capital and receives certification for a tax credit pursuant to the provisions of R.S. 51:3111, et seq. The credit shall be earned and vested in the year that the investment is made. The amount of the credit shall be equal to seventy-five percent of the amount of the investment. The premium

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tax credit shall be available for taxes charged on insurance premiums under R.S. 22:831, 836, 838, and 842. Notwithstanding any other provision of law to the contrary, the premium tax credit shall not be available for taxes charged on insurance premiums under R.S. 22:345, 439, 833, 835, 837, and 1476.

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

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

(2) The tax credits shall not initially be applicable against premium tax liability generated in any calendar year until the third calendar year after the year in which the investment of eligible capital was made pursuant to the requirements of the Louisiana Entrepreneurial Assistance and Development Program as provided in R.S. 51:3111, et seq.

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

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

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

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Section 2. Chapter 55 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:3111 through 3117, is hereby enacted to read as follows:

§3111. Louisiana Entrepreneurial Assistance and Development Program; premium tax; tax credit; legislative oversight

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

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

B. As used in this Chapter:

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

(2) "Department" means the Department of Economic Development.

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

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

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

(ii) Has at least eighty percent of its employees domiciled in Louisiana or at least eighty percent of its payroll paid to employees domiciled in Louisiana.

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

(b) Meets at least one of the following requirements:

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(i) A net worth less than five million dollars at the time of a LEAD fund's initial investment therein.

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

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

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

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

(c) Has no interest, distribution, or payment features tied to the LEAD fund's profitability or the success of its investments, until all requirements of R.S. 51:3115(A) have been satisfied.

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

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

(b) Has received an equity investment of capital other than eligible capital equal to at least two hundred fifty thousand dollars.

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

(d) This Paragraph shall not be interpreted to preclude an insurance company from exercising its legal rights and remedies, including interim management of a LEAD fund with respect to a LEAD fund that is in default of its statutory or contractual obligations to the insurance company or establishing controls to ensure that the LEAD fund satisfies the requirements of this Chapter. An investment of

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eligible capital shall not result in insurance company control unless such investment exceeds forty million dollars per taxpayer.

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

(7) "Secretary" means the secretary of the Department of Economic Development.

C. An investor that makes an investment of eligible capital in a LEAD fund that is approved by the department pursuant to R.S. 51:3112 shall earn a vested credit against premium tax liability as provided in R.S. 22:832.1. The department shall provide to the Joint Legislative Committee on the Budget a report reflecting the allocation of the two hundred million dollars which is authorized for this program for purposes of eligible capital and tax credits. The report shall be provided on January thirtieth and July thirtieth of each year and shall contain a listing of LEAD funds which have been issued certification and those which have been refused certification within the most recently completed six-month period. The report shall include a brief description of each LEAD fund and its allocation of eligible capital, investors and tax credits. The premium tax credit is earned in the year of investment of eligible capital and shall be subject to the rules on utilization set forth in R.S. 22:832.1 and the forfeiture provisions of R.S. 51:3116.

§3112. Application; certification; reporting

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

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

(2) Evidence that the applicant satisfies the requirements of a "LEAD fund" as defined in R.S. 51:3111(B)(5).

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

(4) A business plan detailing the following:

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

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

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

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

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

B.(1) Not later than the thirtieth day after the date on which an application for certification is received by the department, the secretary shall do one of the following:

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

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

(2) Applications for tax credits pursuant to this Section shall be accepted and approved on a first-come, first-served basis with all applications received on the same date deemed to be received simultaneously. No more than two hundred million dollars in eligible capital shall be allocated under this program. If applications for tax credits received by the department on any date exceed the total amount of approval authority remaining under this Chapter on such date, the eligible capital and associated tax credits shall be allocated on a per applicant basis with each applicant being allocated eligible capital and associated tax credits equal to the total amount of requests received for that day divided by the total amount of applicants filing applications on such date that have been approved. In the event this allocation results in one or more applicants receiving an allocation in excess of the amount which was requested, such excess shall be reallocated to the remaining applicants from that date on an equal basis until the entirety of the allocation has been fully distributed. All applicants that share common management or are under common control, whether such management or control is accomplished directly or indirectly, shall be treated as a single applicant.

C. Any applicant who receives an allocation of eligible capital shall bear any cost, not to exceed fifteen thousand dollars per fiscal year for each applicant, which is allocated to it by the secretary to ensure that all costs of the Department of Economic Development associated with administering the program are reimbursed. The secretary shall allocate such costs based upon the proportion that the applicant's allocation of eligible capital bears to the total amount of eligible capital allocated.

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The amounts collected by the secretary shall be appropriated to the Department of Economic Development.

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

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

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

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

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

§3113. Approval of LEAD fund investments in eligible businesses

A. Prior to making any initial investment in a potential business, a LEAD fund shall request a written opinion from the department as to whether the business in which it proposes to invest is an eligible business, including whether such investment is consistent with the LEAD fund's business plan and satisfies the requirement provided in R.S. 51:3115(A)(2). If within fifteen days from the date of receipt of the request the department has neither granted nor denied the request, the proposed investment shall be deemed to be made in an eligible business that is consistent with the LEAD fund's business plan and that satisfies the requirement of R.S. 51:3115(A)(2) if a written opinion was requested as to satisfaction of that requirement. The denial of a request shall contain reasons for denial.

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

§3114. LEAD fund; maintenance of certification; reporting

A. To maintain certification, a LEAD fund shall:

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

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

(3) Have invested fifty percent of its eligible capital in eligible businesses by the fourth anniversary of its allocation date.

(4) Have invested one hundred percent of its eligible capital only in eligible businesses by the tenth anniversary of its allocation date and satisfied the requirement of R.S. 51:3115(A)(2). A LEAD fund shall invest eligible capital only in eligible businesses, bank deposits, certificates of deposit, or other debt securities issued or guaranteed by investment-grade issuers or money market, mutual, or exchange traded funds whose investments are limited to the foregoing.

B. Not later than January thirty-first of each year, each LEAD fund shall report to the secretary and to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs the following:

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

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

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(3) The percentage of eligible capital invested in businesses that meet the requirement of R.S. 51:3115(A)(2).

(4) Distributions made by the LEAD fund in the preceding year.

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

§3115. LEAD fund; distributions

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

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

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

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

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

(3) Achieved a match amount, that when added to any investments in eligible businesses made by the LEAD fund in excess of one hundred percent of its eligible capital, equals at least one hundred percent of the LEAD fund's allocation of eligible capital.

B. At any time, a LEAD fund may make any of the following:

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

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(2) Payments of interest and principal on the debt of the LEAD fund subject to the limitation of R.S. 51:3111(B)(4)(c).

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

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

(b) An annual management fee in an amount that does not exceed two and one-half percent of the eligible capital of the LEAD fund, provided that a LEAD fund may not pay management fees after the tenth anniversary of its allocation date if it has not met the requirements set forth in R.S. 51:3114(A)(4).

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

(1) Twenty percent if less than eighty percent, but more than sixty percent, of the jobs set forth in the LEAD fund's business plan are created or retained.

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

§3116. LEAD fund; decertification and forfeiture

A. The secretary shall review each annual report to ensure compliance with R.S. 51:3114 and 3115, a material violation of which shall be grounds for decertification of the LEAD fund. If the secretary determines that a LEAD fund is not in compliance with R.S. 51:3114 and 3115, the secretary shall notify the officers of the LEAD fund in writing that the LEAD fund may be subject to decertification after the one-hundred-twentieth day after the date of mailing the notice, unless the

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deficiencies are waived by the secretary or are corrected, and the LEAD fund returns to compliance with law.

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

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

§3117. Louisiana Entrepreneurial Assistance and Development Program; administration

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

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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)]

Ellington HB No. 629

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

Proposed law establishes the La. Entrepreneurial Assistance and Development Program for tax credits against insurance premium tax for venture capital investors who invest in LEAD funds which in turn invest in "eligible businesses". The amount of the credit is equal to 75% of the amount of the investment. The tax credit may not be taken before April 15, 2015, is transferrable, and may be carried forward indefinitely.

Proposed law authorizes the Dept. of Economic Development, hereinafter "department", to administer the program. The department is required to report to the Joint Legislative Committee on the Budget on January 30th and July 30th of each year regarding LEAD funds which have been issued certification or refused certification within the preceding six months. The report shall contain a description of each fund, the amount of its allocation of eligible capital, investors, and tax credits.

Proposed law defines "eligible business" as one with less than 100 full-time employees, at least 80% of which are domiciled in the state or at least 80% of the payroll is paid to employees domiciled in the state. The business shall not be engaged in the following industries: retail sales, real estate development, gaming, natural resource extraction or exploration, insurance, banking, accounting, legal, or medicine. The business shall have a net worth of less than $5 million dollars and a net income of less than $ 15 million.

Proposed law defines "LEAD fund" as a La. partnership, corporation, trust, or limited liability company that is managed by at least two persons who are domiciled in La. and have at least five years' experience in managing venture capital or private equity funds.
Proposed law provides for an application process to be used by a LEAD fund which is seeking to participate in the program and be certified to receive a portion of the $200 million in eligible capital authorized for operation of the program. Proposed law provides the minimum requirements for an application. Further, each applicant that receives an allocation of eligible capital is required to reimburse the department for the cost incurred in administering the program, in an amount not to exceed $15,000 per fund.

Proposed law requires that the department, within 30 days of receipt of a LEAD fund's application, either issue or refuse a certification for the fund. Refusals must include the grounds for the refusal.

Proposed law provides that applications for allocations of eligible capital, and thus, tax credits, will be accepted and approved by the department on a first come first served basis. Procedures are provided for instances where applications are received on the same day, allotments are unused, or the program is oversubscribed.

Proposed law requires that before making an investment in an eligible business, a LEAD fund shall request the opinion of the department as to the eligibility of the business.

Proposed law provides the conditions under which a LEAD fund may retain its certification, which include the investment of certain amounts of its eligible capital over certain periods of time.

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Proposed law requires each LEAD fund which receives an allocation of eligible capital to report January 31st of each year to the secretary of the department and the House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs with regard to its investments made in the preceding year.

Proposed law provides the purposes for which, and conditions under which, distributions may be made from a LEAD fund. Monies may be used by a LEAD fund to pay taxes, expenses regarding the formation and operation of the fund, and the payment of management fees equal to 2.5% of the eligible capital in the fund.

Proposed law requires that the state receive 10% of certain distributions from the fund, which amount may increase based on the number of jobs resulting from execution of the LEAD fund's business plan.

Proposed law authorizes the secretary of the department to review the annual report of each LEAD fund and to decertify a LEAD fund which is determined to be noncompliant with law.

Proposed law authorizes the department to make rules in accordance with the Administrative Procedure Act for the implementation and administration of the program.

(Adds R.S. 22:832.1 and R.S. 51:3111-3117)

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Added requirement that the Dept. of Economic Development report to the Joint Legislative Committee on the Budget each January and July regarding LEAD funds which have been issued certification or refused certification within the preceding six months.

2. Added requirement that each LEAD fund report each January to the House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs regarding their investments made in the preceding year.

3. Deleted the $7,500 application fee.

4. Added requirement that each applicant that receives an allocation of eligible capital shall be responsible for up to $15,000 of the cost incurred by the Dept. of Economic Development associated with administering the program.

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