

Regular Session, 2013

HOUSE BILL NO. 726 (Substitute for House Bill No. 455 by Representative Leger)

BY REPRESENTATIVE LEGER

TAX CREDITS: Establishes the New Markets Jobs Tax Credit

1 AN ACT

2 To enact R.S. 47:6016.1, relative to tax credits; to provide with respect to the Louisiana  
3 New Markets Jobs Act; to authorize a premium tax credit for investments in low-  
4 income community development; to provide for the amount of the tax credit; to  
5 provide for eligibility for and usage of the tax credit; and to provide for related  
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:6016.1 is hereby enacted to read as follows:

9 §6016.1. Louisiana New Markets Jobs Act; premium tax credit

10 A. The provisions of this Section shall be known as and may be cited as the  
11 "Louisiana New Markets Jobs Act".

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

15 (1) "Applicable percentage" means zero percent for the first three credit  
16 allowance dates and fifteen percent for the next three credit allowance dates and zero  
17 percent for the final credit allowance date.

18 (2) "Credit allowance date" means, with respect to any qualified equity  
19 investment, the following:

20 (a) The date on which such investment is initially made.

1           (b) Each of the six anniversary dates of such date thereafter.

2           (3) "Department" means the Department of Revenue, unless otherwise noted.

3           (4) "Purchase price" means the amount paid to the issuer of a qualified  
4 equity investment for such qualified equity investment.

5           (5) "Qualified active low-income community business" has the meaning  
6 given such term in Section 45D of the Internal Revenue Code of 1986, as amended,  
7 and 26 CFR 1.45D-1.

8           (6) "Qualified community development entity" has the meaning given such  
9 term in Section 45D of the Internal Revenue Code of 1986, as amended; provided  
10 that such entity has entered into, for the current year or any prior year, an allocation  
11 agreement with the Community Development Financial Institutions Fund of the  
12 United States Treasury Department with respect to credits authorized by Section 45D  
13 of the Internal Revenue Code of 1986, as amended, which includes the state of  
14 Louisiana within the service area set forth in such allocation agreement. The term  
15 shall include qualified community development entities that are controlled by or  
16 under common control with any such qualified community development entity.

17           (7) "Qualified equity investment" means any equity investment in a qualified  
18 community development entity that meets each of the following criteria:

19           (a) Is acquired after the effective date of this Act at its original issuance  
20 solely in exchange for cash or, if not so acquired, was a qualified equity investment  
21 in the hands of a prior holder.

22           (b) Has at least one hundred percent of its cash purchase price used by the  
23 issuer to make qualified low-income community investments in qualified active low-  
24 income community businesses located in this state by the first anniversary of the  
25 initial credit allowance date.

26           (c) Is designated by the issuer as a qualified equity investment under this  
27 Paragraph and is certified by the department as not exceeding the limitation  
28 contained in Paragraph (E)(5) of this Section.

1           (8) "Qualified low-income community investment" means any capital or  
2           equity investment in, or loan to, any qualified active low-income community  
3           business. With respect to any one qualified active low-income community business,  
4           the maximum amount of qualified low-income community investments made in that  
5           business, on a collective basis with all of its affiliates that may be counted towards  
6           satisfaction of Subparagraph (7)(b) of this Subsection is ten million dollars whether  
7           issued by one or several qualified community development entities. Any amounts  
8           returned or repaid by such qualified active low-income community business to a  
9           qualified community development entity may be reinvested in such qualified active  
10           low-income community business by such qualified community development entity  
11           and not be counted against the ten million dollar limit provided for in this Paragraph.

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

14           C.(1) Any entity that makes a qualified equity investment is vested with an  
15           earned credit against state premium tax liability that may be utilized as follows:

16           (a) On each credit allowance date of such qualified equity investment the  
17           entity, or subsequent holder of the qualified equity investment, shall be entitled to  
18           utilize a portion of such credit during the taxable year, including such credit  
19           allowance date.

20           (b) The credit amount shall be equal to the applicable percentage for such  
21           credit allowance date multiplied by the purchase price paid to the issuer of such  
22           qualified equity investment.

23           (2) The amount of the credit claimed by an entity shall not exceed the  
24           amount of such entity's state premium tax liability for the tax year for which the  
25           credit is claimed. Any amount of tax credit that the entity is prohibited from  
26           claiming in a taxable year as a result of this Paragraph may be carried forward for  
27           use in future taxable years for a period not to exceed ten years.

28           D.(1) Tax credits earned by a partnership, limited liability company, S-  
29           corporation, or other pass through entity may be allocated to the partners, members,

1 or shareholders of such entity for their direct use in accordance with the provisions  
2 of any agreement among such partners, members, or shareholders.

3 (2)(a) Any tax credits not previously claimed by a taxpayer against its  
4 premium tax may be transferred or sold to another Louisiana taxpayer, subject to the  
5 following conditions:

6 (i) A single transfer or sale may involve one or more transferees.

7 (ii) Transferors and transferees shall submit to the Department of Insurance,  
8 in writing, a notification of any transfer or sale of tax credits within thirty days after  
9 the transfer or sale of such tax credits which notice contains the amount of the  
10 remaining tax credit balance after transfer, all tax identification numbers for both  
11 transferor and transferee, the date of the transfer, the amount transferred, the price  
12 paid by the transferee to the transferor, and any other information required by the  
13 Department of Insurance.

14 (b) Failure to comply with this Paragraph will result in the disallowance of  
15 the tax credit until the taxpayers are in full compliance.

16 (c) The transfer or sale of this credit does not extend the time in which the  
17 credit can be used. The carry forward period for a credit that is transferred or sold  
18 begins on the date on which the credit was originally earned.

19 (d) To the extent that the transferor did not have rights to claim or use the  
20 credit at the time of the transfer, the Department of Insurance shall either disallow  
21 the credit claimed by the transferee or recapture the credit from the transferee.

22 E.(1) A qualified community development entity that seeks to have an equity  
23 investment designated as a qualified equity investment and eligible for tax credits  
24 under this Section shall apply to the department. On a form prescribed by the  
25 department, the qualified community development entity shall include each of the  
26 following in or attached to its application:

27 (a) Evidence of the applicant's certification as a qualified community  
28 development entity, including evidence that Louisiana is contained in the service  
29 area of the entity.

1           (b) A copy of the allocation agreement executed by an applicant, or its  
2           controlling entity, and the Community Development Financial Institutions Fund.

3           (c) A certificate executed by an executive officer of the applicant attesting  
4           that the allocation agreement remains in effect and has not otherwise been revoked  
5           or cancelled by the Community Development Financial Institutions Fund.

6           (d) A description of the proposed amount, structure, and purchaser of the  
7           qualified equity investment.

8           (e) Identifying information for any entity that will earn tax credits as a result  
9           of the issuance of the qualified equity investment.

10          community businesses in which they will invest when submitting an application.

11          (2) Within thirty days after receipt of a completed application containing the  
12          information set forth in Paragraph (1) of this Subsection, including the deposit as  
13          required in Subsection H of this Section, the department shall grant or deny the  
14          application in full or in part. If the department denies any part of the application, it  
15          shall inform the qualified community development entity of the grounds for the  
16          denial. If the qualified community development entity provides additional  
17          information required by the department or otherwise completes its application within  
18          fifteen days of the notice of denial, the application shall be considered completed as  
19          of the original date of the submission. If the qualified community development  
20          entity fails to provide the information or complete its application within the fifteen-  
21          day period, the application remains denied and must be resubmitted in full with a  
22          new submission date, and the department shall refund the performance deposit.

23          (3) If the application is granted, the department shall certify the proposed  
24          equity investment as a qualified equity investment that is eligible for tax credits  
25          under this Section, subject to the limitations contained in Paragraph (5) of this  
26          Subsection. The department shall provide written notice of the certification to the  
27          qualified community development entity. The notice shall include the names of  
28          those entities who will earn the credits and their respective credit amounts. If the  
29          names of the entities that are eligible to utilize the credits change due to a transfer

1        of a qualified equity investment or an allocation pursuant to Paragraph (D)(1) of this  
2        Section, the qualified community development entity shall notify the Department  
3        of Insurance of such change.

4            (4) The department shall certify qualified equity investments in the order in  
5        which applications are received by the department. Applications received on the  
6        same day shall be deemed to have been received simultaneously. For applications  
7        that are complete and received on the same day, the department shall certify,  
8        consistent with remaining qualified equity investment capacity, the qualified equity  
9        investments in proportionate percentages based upon the ratio of the amount of  
10       qualified equity investment requested in an application to the total amount of  
11       qualified equity investments requested in all applications received on the same day.

12           (5) A total of one hundred ten million dollars of qualified equity investment  
13       authority shall be available for certification and allocation. The department shall  
14       accept applications beginning on November 1, 2013, for allocation and certification  
15       of up to fifty-five million dollars of qualified equity investments. The department  
16       shall accept applications for the remaining fifty-five million dollars of such authority  
17       beginning on September 2, 2014. If a pending request cannot be fully certified due  
18       to these limits of qualified equity investment authority, the department shall certify  
19       the portion of qualified equity investment authority that may be certified unless the  
20       qualified community development entity elects to withdraw its request rather than  
21       receive partial certification.

22           (6) An approved applicant may transfer all or a portion of its certified  
23       qualified equity investment authority to its controlling entity or any qualified  
24       community development entity that is controlled by or under common control with  
25       the applicant, provided that the applicant provides the information required in the  
26       application with respect to such transferee and the applicant notifies the department  
27       of such transfer with the notice of receipt of the cash investment set forth in  
28       Paragraph (7) of this Subsection.

1           (7) Within thirty days of the applicant receiving certification of qualified  
2           equity investment authority, the qualified community development entity or any  
3           transferee under Paragraph (6) of this Subsection shall issue the qualified equity  
4           investment, receive cash in the amount of the certified amount and designate an  
5           amount equal to the certified amount as a federal qualified equity investment with  
6           the Community Development Financial Institutions Fund. The qualified community  
7           development entity or transferee under Paragraph (6) of this Subsection shall provide  
8           the department with evidence of the receipt of the cash investment and designation  
9           of the qualified equity investment as a federal qualified equity investment within five  
10           business days after receipt. If the qualified community development entity or any  
11           transferee pursuant to Paragraph (6) of this Subsection does not receive the cash  
12           investment within thirty days following receipt of the certification notice, the  
13           certification shall lapse and the entity may not issue the qualified equity investment  
14           without reapplying to the department for certification. Lapsed certifications revert  
15           back to the department and shall be reissued, first, pro rata to other applicants whose  
16           qualified equity investment allocations were reduced pursuant to Paragraph (4) of  
17           this Subsection and, thereafter, in accordance with the application process.

18           F. The Department of Insurance shall recapture, from the entity that claimed  
19           the credit on a return, the tax credit allowed pursuant to this Section if either of the  
20           following occur:

21           (1) Any amount of a federal tax credit available with respect to a qualified  
22           equity investment that is eligible for a credit under this Section is recaptured under  
23           Section 45D of the Internal Revenue Code of 1986, as amended. In such case, the  
24           Department of Insurance's recapture shall be proportionate to the federal recapture  
25           with respect to such qualified equity investment.

26           (2) The issuer fails to invest an amount equal to one hundred percent of the  
27           purchase price of the qualified equity investment in qualified low-income  
28           community investments in Louisiana within twelve months of the issuance of the  
29           qualified equity investment and maintain such level of investment in qualified low-

1 income community investments in Louisiana until the last credit allowance date for  
2 the qualified equity investment. For purposes of this Section, an investment shall be  
3 considered held by an issuer even if the investment has been sold or repaid if the  
4 issuer reinvests an amount equal to the capital returned to or recovered by the issuer  
5 from the original investment, exclusive of any profits realized, in another qualified  
6 low-income community investment within twelve months of the receipt of such  
7 capital. Periodic amounts received during a calendar year as repayment of principal  
8 on a loan that is a qualified low-income community investment shall be treated as  
9 continuously invested in a qualified low-income community investment if the  
10 amounts are reinvested in another qualified low-income community investment by  
11 the end of the following calendar year as set forth in 26 CFR 1.45D-1. An issuer  
12 shall not be required to reinvest capital returned from qualified low-income  
13 community investments after the sixth anniversary of the issuance of the qualified  
14 equity investment, the proceeds of which were used to make the qualified low-  
15 income community investment, and the qualified low-income community investment  
16 shall be considered held by the issuer through the seventh anniversary of the  
17 qualified equity investment's issuance.

18 G. Enforcement of the recapture provisions of Subsection F of this Section  
19 shall be subject to a six month cure period. No recapture shall occur until the  
20 qualified community development entity has been given notice of noncompliance by  
21 the Department of Insurance and afforded six months from the date of such notice  
22 to cure the noncompliance.

23 H.(1) A qualified community development entity that seeks to have an equity  
24 investment designated as a qualified equity investment and eligible for tax credits  
25 pursuant to this Section shall pay a deposit in the amount of five hundred thousand  
26 dollars payable to the department. The entity shall forfeit the deposit in its entirety  
27 if either:

28 (a) The qualified community development entity and all transferees pursuant  
29 to Paragraph (E)(6) of this Section fail to issue the total amount of qualified equity



1 investments certified by the department and receive cash in the total amount certified  
2 under Paragraph (E)(5) of this Section within the time period set forth in Paragraph  
3 (E)(7) of this Section.

4 (b) The qualified community development entity or any transferee pursuant  
5 to Paragraph (E)(6) of this Section that issues a qualified equity investment certified  
6 pursuant to this Section fails to meet the investment requirement under Paragraph  
7 (F)(2) of this Section by the second credit allowance date of such benefit of the six  
8 month cure period established pursuant to Subsection G of this Section.

9 (2) The deposit required by Paragraph (1) of this Subsection shall be  
10 deposited with the department and held until such time as compliance with the  
11 provisions of this Subsection shall have been established. The qualified community  
12 development entity may request a return of the deposit from the department no  
13 earlier than thirty days after having met all the requirements of Paragraph (1) of this  
14 Subsection. The department shall have thirty days to comply with such request or  
15 give notice of noncompliance. In the event the qualified community development  
16 entity fails to fulfill the conditions of Paragraph (1)(a) of this Section, then the  
17 amount payable from such deposit shall be retained by the department as self-  
18 generated funds.

19 I.(1) An entity claiming a credit pursuant to this Section is not required to  
20 pay any additional retaliatory tax levied by R.S. 22:836 as a result of claiming that  
21 credit.

22 (2) In addition to the exclusion in Paragraph (1) of this Subsection, it is the  
23 intent of this Act that an entity claiming a credit pursuant to this Section is not  
24 required to pay any additional tax that may arise as a result of claiming that credit.

25 J.(1) Qualified community development entities that issue qualified equity  
26 investments shall submit a report to the department within the first five business days  
27 after the first anniversary of the initial credit allowance date that provides  
28 documentation as to the investment of one hundred percent of the purchase price in

1 qualified low-income community investments in qualified active low-income  
2 community businesses located in Louisiana. Such report shall include:

3 (a) A bank statement of such qualified community development entity  
4 evidencing each qualified low-income community investment.

5 (b) Evidence that such businesses was a qualified active low-income  
6 community business at the time of such qualified low-income community  
7 investment.

8 (2) Thereafter, the qualified community development entity will submit an  
9 annual report to the department within forty-five days of the beginning of the  
10 calendar year during the compliance period. No annual report shall be due prior to  
11 the first anniversary of the initial credit allowance date. The report shall include but  
12 is not limited to the following:

13 (a) Number of employment positions created and retained as a result of  
14 qualified low-income community investments.

15 (b) Average annual salary of positions described in Subparagraph (a) of this  
16 Paragraph.

17 (3) The qualified community development entity is not required to provide  
18 the annual report set forth in Paragraph (2) of this Subsection for qualified low-  
19 income community investments that have been redeemed or repaid.

20 K.(1) The department may promulgate rules to implement the provisions  
21 of this Section.

22 (2) The department shall issue all forms and notices required hereunder in  
23 accordance with the provisions of this Section.

24 L. The department shall notify the Department of Insurance of the name  
25 of any insurance company allocated tax credits hereunder and the amount of such  
26 credits.

27 M. The provisions of this Section shall apply only to tax returns or reports  
28 originally due on or after January 1, 2014.

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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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Leger

HB No. 726

**Abstract:** Creates the Louisiana New Markets Jobs Act to provide credits against the insurance premium tax.

Present law taxes insurers based on the amount of premiums, called a "premium tax".

Proposed law establishes the Louisiana New Markets 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 low-income community business located in La.

Proposed law defines "qualified active low-income community business" (QALICB or "business") as an entity which under federal law is defined as a business located in either a census tract with a poverty rate of at least 20% or a census tract with a median income that does not exceed 80% of the benchmark median income.

Proposed law defines a "qualified community development entity" (QCDE or "entity") as a privately managed investment entity that has received New Market Tax Credit allocation authority.

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

Proposed law provides that the amount of the tax credit shall be the product of multiplying the amount of the investment purchase price by the following percentages: 0% for the first three years, 15% for the next three years, and 0% thereafter. 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 ten years. Unclaimed tax credits are transferable to one or more transferees.

Proposed law requires that investments eligible for the award of tax credits be certified by the Dept. of Revenue. If a QDE applies for certification of investments, the department shall inform such entity within 30 days of application whether there is certification or a denial of an application. In the case of a denial, the entity shall have the right to provide additional information regarding the application within 15 days of the denial.

Proposed law authorizes a total of \$110,000,000 of investment authority for certification and allocation for the purpose of earning tax credits. The department shall begin accepting applications on November 1, 2013, for allocation and certification of up to \$55,000,000 of QEI. Allocation of the remaining \$55,000,000 shall be available starting with an application process which begins November 1, 2014.

Proposed law requires the issuance of investments within 30 days of receiving certification and that evidence thereof be provided to the Dept. of Revenue.

Proposed law provides for conditions under which the Dept. of Insurance shall recapture tax credits which include a recapture of federal tax credits by the federal government, or a failure to invest an amount equal to 100% of the purchase price of the investment within 12 months of the issuance of the investment.

Proposed law requires the payment of a deposit of \$500,000 for an application for qualification of an investment. The deposit shall be paid to the Dept. of Revenue and deposited into the New Markets performance guarantee account which is established by proposed law. The deposit is returnable after compliance with the requirements of proposed law.

Proposed law requires reporting by a QCDE to the Dept. of Revenue within 5 days of the first 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 such positions.

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 department to promulgate rules to implement the provisions of proposed law.

Proposed law applies to tax returns or reports originally due on or after January 1, 2014.

(Adds R.S. 47:6016.1)