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

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D.(1) Tax credits earned by a partnership, limited liability company, S-corporation, or other pass through entity may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders.

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

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

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

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

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

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

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

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

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

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

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

(e) Identifying information for any entity that will earn tax credits as a result of the issuance of the qualified equity investment and community businesses in which they will invest when submitting an application.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The qualified community development entity and all transferees pursuant to Paragraph (E)(6) of this Section fail to issue the total amount of qualified equity investments certified by the department and receive cash in the total amount certified under Paragraph (E)(5) of this Section within the time period set forth in Paragraph (E)(7) of this Section.

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

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

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

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

J.(1) Qualified community development entities that issue qualified equity investments shall submit a report to the department within the first five business days after the first anniversary of the initial credit allowance date that provides documentation as to the investment of one hundred percent of the purchase price in qualified low-income community investments in qualified active low-income community businesses located in Louisiana. Such report shall include:

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

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

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

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

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

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

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

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

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

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

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)]

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 10 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 August 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 August 1, 2014.

Proposed law requires the issuance of investments within 20 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 five 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)

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Changes the time within which the application for a tax credit must be approved or denied from 30 to 20 days.

2. Changes the date for the start of the application process for the first period in which tax credits may be granted from November 1, 2013, to August 1, 2013.

3. Changes the date for the start of the application process for the second period in which tax credits may be granted from September 2, 2013, to August 1, 2014.