

2017 Regular Session

HOUSE BILL NO. 641

BY REPRESENTATIVES MCFARLAND, ABRAHAM, AND ZERINGUE

TAX CREDITS: Establishes the La. Rural Jobs Act Tax Credit Program

1 AN ACT

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

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:6016.2 is hereby enacted to read as follows:

10 §6016.2. Louisiana Rural Jobs Act; premium tax credit

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

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

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

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

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

5 (3) "Department" means the Department of Economic Development.

6 (4) "Investment authority" means the amount stated on the notice issued
7 under Paragraph (C)(5) of this Section certifying the rural growth fund. At least sixty
8 percent of a rural growth fund's investment authority shall be comprised of an
9 amount equal to the authorized investor contributions.

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

16 (6) "Principal business operations" of a business are located at the place or
17 places where at least sixty percent of its employees work or where employees that
18 are paid at least sixty percent of its payroll work. An out-of-state business that has
19 agreed to relocate employees using the proceeds of a rural growth investment to
20 establish its principal business operations in a rural area in the state shall be deemed
21 to have its principal business operations in this new location provided it satisfies this
22 definition within one hundred eighty days after receiving the rural growth
23 investment, unless the department agrees to a later date.

24 (7) "Rural area" means any area of the state not in a city or unincorporated
25 area that has a population of more than fifty thousand inhabitants per the latest
26 decennial census of the United States or in the urbanized area contiguous and
27 adjacent to a city or unincorporated area that has a population of more than fifty
28 thousand inhabitants.

1 (8) "Rural business" means a business that, at the time of the initial
2 investment in the company by a rural growth fund, meets all of the following criteria:

3 (a) Has fewer than one hundred employees.

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

6 (c) Is engaged in industries assigned a North American Industrial
7 Classification System code within Sectors 11, 21, 23, 31 through 33, 42, 48, 49, 54,
8 except 541110 through 541219, 56, 62, and 81 or, if not engaged in any of these
9 industries, the department determines that the investment will be beneficial to the
10 rural area and the economic growth of the state.

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

15 (10) "Rural growth investment" means any capital or equity investment in a
16 rural business or any loan to a rural business by a rural growth fund with a stated
17 maturity at least one year after the date of issuance.

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

20 C. (1) Beginning October 1, 2017, the department shall accept applications
21 for approval as a rural growth fund. On a form prescribed by the department, the
22 application shall include all of the following:

23 (a) The total investment authority sought by the applicant under the business
24 plan.

25 (b) A copy of the applicant or an affiliate of the applicant's license as a rural
26 business investment company issued pursuant to 7 U.S.C. 2009cc and the regulations
27 and procedures thereunder, or as a small business investment company issued
28 pursuant to 15 U.S.C. 681 and the regulations and procedures thereunder.

1 (c) Evidence that as of the date the application is submitted, the applicant or
2 affiliates of the applicant have invested at least one hundred million dollars in
3 nonpublic companies located in nonmetropolitan counties as defined by the Office
4 of Management and Budget within the Office of the President of the United States
5 on the basis of county or county-equivalent units, exclusive of any investments made
6 pursuant to the provisions of this Section.

7 (d) An estimate of the number of jobs that will be created or retained in this
8 state because of the applicant's proposed rural growth investments.

9 (e) A business plan that includes a revenue impact assessment projecting state
10 and local tax revenue to be generated by the applicant's proposed rural growth
11 investments prepared by a nationally recognized third-party independent economic
12 forecasting firm using a dynamic economic forecasting model that analyzes the
13 applicant's business plan over the ten years following the date the application is
14 submitted to the department.

15 (f) A signed affidavit from each investor stating the amount of investor
16 contributions each investor commits to make.

17 (2) Within thirty days after receipt of a completed application containing the
18 information set forth in Paragraph (1) of this Subsection, the department shall grant
19 or deny the application. The department shall deem applications received on the
20 same day to have been received simultaneously. The allocation of investment
21 authority and investor contributions shall be on a first-come, first-served basis. The
22 department shall not approve more than one hundred fifty million dollars in
23 investment authority and not more than ninety million dollars in investor
24 contributions under this Section over the life of the program. If requests for
25 investment authority exceed this limitation, the department shall proportionally
26 reduce the investment authority and the investor contributions for each approved
27 application as necessary to avoid exceeding the limit.

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

29 (a) The application is incomplete.

1 (b) The applicant, or an affiliate of the applicant, is not a rural business
2 investment company or a small business investment company as required by
3 Paragraph (1)(b) of this Subsection and has not previously invested one hundred
4 million dollars in nonpublic companies as required by Paragraph(1)(c) of this
5 Subsection.

6 (c) The revenue impact assessment submitted under Paragraph (1)(e) of this
7 Subsection does not demonstrate that the applicant's business plan will result in a
8 positive economic impact on this state over a ten-year period that exceeds the
9 cumulative amount of tax credits that would be issued to the applicant's investors.

10 (d) The combined investor contributions described in affidavits submitted
11 under Paragraph (1)(f) of this Subsection do not equal at least sixty percent of the
12 total amount of investment authority sought under the applicant's business plan.

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

15 (4) If the department denies an application, the applicant may provide
16 additional information to the department to complete, clarify, or cure defects in the
17 application within fifteen days of the notice of denial for reconsideration and
18 determination. The department shall review and reconsider such applications within
19 thirty days before any pending application submitted after the original submission
20 date of the reconsidered application.

21 (5) The department shall not reduce the requested investment authority or
22 deny a rural growth fund application for reasons other than those described in
23 Paragraphs (2) and (3) of this Subsection. Upon approval of an application, the
24 department shall certify the applicant as a rural growth fund specifying the amount
25 of the applicant's investment authority and the investor contributions required from
26 each taxpayer that submitted an affidavit with the rural growth fund's application.

27 (6)(a) Within sixty days of receiving the approval issued under Paragraph (5)
28 of this Subsection, the rural growth fund shall collect all investor contributions and
29 collect additional investments of cash that, when added to the investor contributions,

1 equal to at least the amount of the rural growth fund's investment authority. At least
2 ten percent of the rural growth fund's investment authority shall be comprised of
3 equity investments contributed by affiliates of the rural growth fund, including
4 employees, officers, and directors of such affiliates. Within sixty-five days of
5 receiving the approval issued under Paragraph (5) of this Subsection, a rural growth
6 fund shall send to the department documentation sufficient to prove that the amounts
7 described in this Subparagraph have been collected.

8 (b) Upon receipt of the documentation required by Subparagraph (6)(a) of
9 this Paragraph, the department shall provide a tax credit certificate to each investor
10 that made an investor contribution in the amount of the investor's investor
11 contribution.

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

21 D.(1) Any taxpayer that makes an investor contribution and receives a tax
22 credit certificate pursuant to Subparagraph (C)(6)(b) of this Section shall be vested
23 with an earned credit against state premium tax liability, subject to the recapture
24 provisions of Subsection E and Paragraph (G)(4) of this Section. The amount of the
25 credit shall be equal to the amount of the investor contribution. Credits authorized
26 pursuant to the provisions of this Section shall first be applicable to the state
27 premium tax liability of the investor that begins in the taxable year of the fifth
28 anniversary of the closing date. No more than one-third of the total amount of the
29 credit shall be applied in each of the taxable years beginning with the taxable year

1 of the fifth anniversary of the closing date, through the taxable year of the seventh
2 anniversary of the closing date, exclusive of any amount carried forward amounts
3 authorized pursuant to Paragraph (2) of this Subsection.

4 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the
5 amount of the credit claimed by a taxpayer shall not exceed the amount of such
6 taxpayer's state premium tax liability for the tax year for which the credit is claimed.
7 Any amount of tax credit that the taxpayer does not claim in a taxable year may be
8 carried forward for use in future taxable years for a period not to exceed ten years.

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

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

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

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

23 (b) The rural growth fund, after satisfying Subparagraph (1)(a) of this
24 Subsection, fails to maintain rural growth investments equal to at least one hundred
25 percent of its investment authority until the seventh anniversary of the closing date.
26 For the purposes of this Subparagraph, an investment is "maintained" even if it is
27 sold or repaid so long as the rural growth fund reinvests an amount equal to the
28 capital returned or recovered from the original investment, exclusive of any profits
29 realized, in other rural growth investments in this state within twelve months of the

1 receipt of the capital. Amounts received periodically by a rural growth fund shall be
2 treated as continuously invested in rural growth investments if the amounts are
3 reinvested in one or more rural growth investments by the end of the following
4 calendar year. A rural growth fund shall not be required to reinvest capital returned
5 from rural growth investments after the sixth anniversary of the closing date, and the
6 rural growth investments shall be considered held continuously by the rural growth
7 fund through the seventh anniversary of the closing date.

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

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

15 (I) Owns the rural growth fund, or an affiliate of or investor of the rural
16 growth fund.

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

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

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

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

27 (2) For purposes of the investment amounts required by Subparagraphs
28 (1)(a) and (b) of this Subsection, a rural growth fund shall be allowed to take into
29 account up to five million dollars of rural growth investments per rural business,

1 including amounts invested in affiliates of the rural business. Any amounts
2 reinvested by a rural growth fund with the proceeds of repaid or redeemed rural
3 growth fund investments shall not be included in the five million dollar cap.

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

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

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

28 (6) The department shall not recapture a tax credit certificate after a rural
29 growth fund exits from the program.

1 F. A rural growth fund, before making a rural growth investment, may
2 request from the department, a written opinion as to whether the business in which
3 it proposes to invest satisfies the definition of a rural business. The department, not
4 later than the fifteenth business day after the date of receipt of the request, shall
5 notify the rural growth fund of its determination. If the department fails to notify the
6 rural growth fund by the fifteenth business day of its determination, the business in
7 which the rural growth fund proposes to invest shall be considered a rural business.

8 G.(1) Each rural growth fund shall submit a report to the department on or
9 before the fifth business day after the second anniversary of the closing date. The
10 report shall provide documentation as to each rural growth investment and shall
11 include all of the following:

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

13 (b) The name, location, and industry of each rural business receiving a rural
14 growth investment, including either the determination letter set forth in Subsection
15 F of this Section or evidence that the business qualified as a rural business at the time
16 the investment was made.

17 (c) The number of employment positions created or retained because of the
18 rural growth fund's rural growth investments as of the last day of the preceding
19 calendar year.

20 (d) Any other information required by the department.

21 (2) After compliance with the reporting requirements of Paragraph (1) of this
22 Subsection, the rural growth fund shall submit a report annually to the department
23 within forty-five days of the beginning of the calendar year during the compliance
24 period. The report shall include:

25 (a) The number of employment positions created or retained because of the
26 rural growth fund's rural growth investments as of the last day of the preceding
27 calendar year.

28 (b) The average annual salary of the positions described in Subparagraph
29 (1)(c) of this Subsection.

1 (c) Any other information required by the department.

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

6 (4) In the event a report required by this Subsection is not timely submitted,
7 tax credits claimed by a taxpayer pursuant to this Section shall be disallowed until
8 the required report has been submitted.

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

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

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

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

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)]

HB 641 Original

2017 Regular Session

McFarland

Abstract: Establishes the "Louisiana Rural Jobs Act" and allows a premium tax credit for investments made in certain rural businesses. The maximum amount of investment authority is \$150M and the maximum amount of investor contributions is capped at \$90M for certification and allocation of tax credits.

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

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

Proposed law defines "rural business" as a business with fewer than 50 employees, maintains its principal operations in one or more rural areas of the state, and is engaged in a business with a NAICS code as follows:

- (1) Sector 11 - Agriculture, Forestry, Fishing, and Hunting
- (2) Sector 21 - Mining
- (3) Sector 23 - Construction
- (4) Sector 31-33 - Manufacturing
- (5) Sector 42 - Wholesale trade
- (6) Sector 48-49 - Transportation and Warehousing
- (7) Sector 54 - Professional, Scientific, and Technical Services, except those related to the legal and accounting professions
- (8) Sector 56 - Administrative and Support and Waste Management and Remediation Services
- (9) Sector 62 - Health Care and Social Assistance
- (10) Sector 81 - Other Services, except Public Administration

Proposed law defines a "rural growth fund" as an entity certified by the Dept. of Economic Development as meeting the capitalization, job creation, and revenue impact assessment requirements of the program.

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

Proposed law authorizes a maximum of \$150M of investment authority and \$90M of investor contributions for certification and allocation for the purpose of earning tax credits. The department shall begin accepting applications on Oct. 1, 2017.

Proposed law requires that investments eligible for the award of tax credits be certified by the Dept. of Economic Development. If an applicant applies for approval as a rural growth fund, the department shall inform the entity within 30 days of application whether the application is certified or denied. In the case of a denial, the entity shall have the right to provide additional information regarding the application within 15 days of receipt of the denial.

Proposed law requires the issuance of investments within 20 days of receiving certification.

Proposed law provides that the amount of the tax credit shall be equal to the investor contribution and shall be allowed to be taken in an amount equal to 1/3 each year beginning with the fifth year through the seventh year of the investment. The total of all such credits taken cannot exceed the taxpayer's state premium tax liability for the tax year for which the credit is claimed; however, unused credits may be carried forward for up to 10 years. The credit can only be transferred or allocated to a related entity that has an insurance premium tax liability at the time the rural growth fund application was originally submitted.

Proposed law provides for conditions under which the Dept. of Insurance shall recapture tax credits, which include a failure to invest an amount equal to 100% of the purchase price of the investment within 24 months of the issuance of the investment or failure to maintain the investment through year seven.

Proposed law requires reporting by a rural growth fund to the Dept. of Economic Development within five days of the second 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 the positions.

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

Proposed law requires the Dept. of Economic Development 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 in accordance with the APA.

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

(Adds R.S. 47:6016.2)