

Regular Session, 2013

SENATE BILL NO. 234

BY SENATOR MORRELL AND REPRESENTATIVE LEGER

TAX/TAXATION. Authorizes the issuance of New Market Jobs Tax Credits. (8/1/13)

1 AN ACT

2 To enact R.S. 22:832.1, relative to insurance premium tax credits; to establish the Louisiana
3 New Markets Jobs tax credit; to authorize a premium tax credit for investments in
4 low-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. 22:832.1 is hereby enacted to read as follows:

9 **§832.1. Louisiana New Markets Jobs Act; premium tax credit**

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

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

15 **(1) "Applicable percentage" means zero percent for the first two credit**
16 **allowance dates and ten percent for the next four credit allowance dates.**

17 **(2) "Credit allowance date" means, with respect to any qualified equity**

1 **investment, the following:**

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

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

4 **(3) "Department" means the Department of Insurance.**

5 **(4) "Letter ruling" means a written interpretation of law to a specific**
6 **set of facts provided by the applicant requesting a letter ruling.**

7 **(5) "Purchase price" means the amount paid to the issuer of a qualified**
8 **equity investment for such qualified equity investment.**

9 **(6) "Qualified active low-income community business" has the meaning**
10 **given such term in Section 45D of the Internal Revenue Code of 1986, as**
11 **amended, and 26 CFR Sec. 1.45D-1. A business shall be considered a qualified**
12 **active low-income community business for the duration of the qualified**
13 **community development entity's investment in, or loan to, the business if the**
14 **entity reasonably expects, at the time it makes the investment or loan, that the**
15 **business will continue to satisfy the requirements for being a qualified active**
16 **low-income community business throughout the entire period of the investment**
17 **or loan.**

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

28 **(8) "Qualified Equity Investment" means any equity investment in a**
29 **qualified community development entity that meets each of the following**

1 **criteria:**

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

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

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

12 **(9) "Qualified low-income community investment" means any capital**
13 **or equity investment in, or loan to, any qualified active low-income community**
14 **business. With respect to any one qualified active low-income community**
15 **business, the maximum amount of qualified low-income community investments**
16 **made in that business, on a collective basis with all of its affiliates that may be**
17 **counted towards satisfaction of Subparagraph (7)(b) of this Subsection is ten**
18 **million dollars whether issued by one or several qualified community**
19 **development entities. Any amounts returned or repaid by such qualified active**
20 **low-income community business may be reinvested in such qualified active low-**
21 **income community business and not be counted against such ten million dollar**
22 **limit.**

23 **(10) "State premium tax liability" means any liability incurred by any**
24 **entity under the provisions of R.S. 22:831, 836, 838 and 842 or, if the tax**
25 **liability under R.S. 22:831, 836, 838 and 842 is eliminated or reduced, the term**
26 **shall also mean any tax liability imposed by the state on an insurance company**
27 **or other person that had premium tax liability under the laws of this state.**

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

1 **follows:**

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

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

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

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

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

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

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

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

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

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

9 **E.(1) A qualified community development entity that seeks to have an**
10 **equity investment designated as a qualified equity investment and eligible for**
11 **tax credits under this Section shall apply to the department. The qualified**
12 **community development entity shall include each of the following in or attached**
13 **to its application:**

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

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

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

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

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

28 **(f) Examples of the types of qualified active low-income businesses in**
29 **which the applicant, its controlling entity, or affiliates of its controlling entity**

1 have invested under the Federal New Markets Tax Credit Program. Applicants
2 are not required to identify qualified active low-income community businesses
3 in which they will invest when submitting an application.

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

17 (3) If the application is granted, the department shall certify the
18 proposed equity investment as a qualified equity investment that is eligible for
19 tax credits under this Section, subject to the limitations contained in Paragraph
20 (5) of this Subsection. The department shall provide written notice of the
21 certification to the qualified community development entity. The notice shall
22 include the names of those entities who will earn the credits and their respective
23 credit amounts. If the names of the entities that are eligible to utilize the credits
24 change due to a transfer of a qualified equity investment or an allocation
25 pursuant to Paragraph (D)(1), the qualified community development entity shall
26 notify the department of such change.

27 (4) The department shall certify qualified equity investments in the
28 order in which applications are received by the department. Applications
29 received on the same day shall be deemed to have been received simultaneously.

1 For applications that are complete and received on the same day, the
2 department shall certify, consistent with remaining qualified equity investment
3 capacity, the qualified equity investments in proportionate percentages based
4 upon the ratio of the amount of qualified equity investment requested in an
5 application to the total amount of qualified equity investments requested in all
6 applications received on the same day.

7 (5) A total of one hundred twenty-five million dollars of qualified equity
8 investment authority shall be available for certification and allocation. The
9 department shall accept applications beginning on September 1, 2013, for
10 allocation and certification of up to sixty-two million five hundred thousand
11 dollars of qualified equity investments. The department shall accept
12 applications for the remaining sixty-two million five hundred thousand dollars
13 of such authority beginning on September 1, 2014. If a pending request cannot
14 be fully certified due to these limits, the department shall certify the portion
15 that may be certified unless the qualified community development entity elects
16 to withdraw its request rather than receive partial certification.

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

24 (7) Within thirty days of the applicant receiving notice of certification,
25 the qualified community development entity or any transferee under Paragraph
26 (6) of this Subsection shall issue the qualified equity investment, receive cash in
27 the amount of the certified amount and designate an amount equal to the
28 certified amount as a federal qualified equity investment with the Community
29 Development Financial Institutions Fund. The qualified community

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

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

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

21 (2) The issuer fails to invest an amount equal to one hundred percent of
22 the purchase price of the qualified equity investment in qualified low-income
23 community investments in Louisiana within twelve months of the issuance of the
24 qualified equity investment and maintain such level of investment in qualified
25 low-income community investments in Louisiana until the last credit allowance
26 date for the qualified equity investment. For purposes of this Section, an
27 investment shall be considered held by an issuer even if the investment has been
28 sold or repaid if the issuer reinvests an amount equal to the capital returned to
29 or recovered by the issuer from the original investment, exclusive of any profits

1 realized, in another qualified low-income community investment within twelve
2 months of the receipt of such capital. Periodic amounts received during a
3 calendar year as repayment of principal on a loan that is a qualified low-income
4 community investment shall be treated as continuously invested in a qualified
5 low-income community investment if the amounts are reinvested in another
6 qualified low-income community investment by the end of the following
7 calendar year as set forth in 26 CFR Sec. 1.45D-1. An issuer shall not be
8 required to reinvest capital returned from qualified low-income community
9 investments after the sixth anniversary of the issuance of the qualified equity
10 investment, the proceeds of which were used to make the qualified low-income
11 community investment, and the qualified low-income community investment
12 shall be considered held by the issuer through the seventh anniversary of the
13 qualified equity investment's issuance.

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

19 H.(1) A qualified community development entity that seeks to have an
20 equity investment designated as a qualified equity investment and eligible for
21 tax credits pursuant to this Section shall pay a deposit in the amount of five
22 hundred thousand dollars to the department for deposit in the New Markets
23 performance guarantee account, which is hereby established. The entity shall
24 forfeit the deposit in its entirety if either:

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

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

7 **(2) The deposit required by Paragraph (1) of this Subsection shall be**
8 **deposited with the department and held in the New Markets performance**
9 **guarantee account until such time as compliance with the provisions of this**
10 **Subsection shall have been established. The qualified community development**
11 **entity may request a return of the deposit from the department no earlier than**
12 **thirty days after having met all the requirements of Paragraph (1) of this**
13 **Subsection. The department shall have thirty days to comply with such request**
14 **or give notice of noncompliance.**

15 **I.(1) The department shall issue letter rulings regarding the tax credit**
16 **program authorized under and subject to the terms and conditions set forth in**
17 **this Section, subject to the terms and conditions set forth in this Section.**

18 **(2) The department shall respond to a request for a letter ruling within**
19 **sixty days of receipt of such request. The applicant may provide a draft letter**
20 **ruling for the department's consideration. The applicant may withdraw the**
21 **request for a letter ruling, in writing, prior to the issuance of the letter ruling.**
22 **The department may refuse to issue a letter ruling for good cause, but shall list**
23 **the specific reasons for refusing to issue the letter ruling. Good cause includes**
24 **but is not limited to:**

25 **(a) The applicant requests the department to determine whether a**
26 **statute is constitutional or a regulation is lawful.**

27 **(b) The request involves a hypothetical situation or alternative plans.**

28 **(c) The facts or issues presented in the request are unclear, overbroad,**
29 **insufficient, or otherwise inappropriate as a basis upon which to issue a letter**

1 ruling.

2 (d) The issue is currently being considered in a rulemaking procedure,
3 contested case, or other agency or judicial proceeding that may definitely
4 resolve the issue.

5 (3) Letter rulings shall bind the department and the department's agents
6 and their successors until such time as the entity or its shareholders, members,
7 or partners, as applicable, claim all of such credits on a Louisiana tax return or
8 report, subject to the terms and conditions set forth in properly published
9 regulations. The letter ruling shall apply only to the applicant.

10 (4) In rendering letter rulings and making other determinations under
11 this Section, to the extent applicable, the department shall look to Section 45D
12 of the Internal Revenue Code of 1986, as amended, and the rules and
13 regulations issued thereunder for guidance.

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

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

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

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

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

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

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

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

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

17 **L.(1) The department may promulgate rules to implement the provisions**
18 **of this Section.**

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

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

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Danielle Doiron.

DIGEST

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

Proposed law creates the Louisiana New Markets Jobs Act which provides an income tax credit against the premium tax liability for any entity which makes an investment of private capital into a "qualified community development entity" (QCDE or "entity") located in Louisiana. The QCDE must have at least 100% 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 the state.

The tax credit is equal to 0% of the purchase price of the "qualified equity investment" [QEI] for the first two years and 10% of the purchase price for the next four years. The total of all such credits taken cannot exceed the entity's state premium tax liability for the tax year for which the credit is claimed; however, any credits that are not used are carried forward for up to 10 years. A total of \$125,000,000 of QEI investment authority is available for certification and allocation by the Department of Insurance. The department is required to accept applications beginning September 1, 2013, for allocation of up to \$62,500,000.00 of QEI.

"Qualified equity investment" [QEI or "investment"] is defined as an equity investment in a "qualified active low-income community business" (QALICB or "business") that meets certain criteria. A business is considered a QALICB for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan.

Proposed law provides several definitions, including a "qualified community development entity" (QCDE or "entity") to mean that which is ascribed in Section 45D of the Internal Revenue Code. Under federal law, a QALICB 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. QCDE are privately managed investment entities that have received New Market Tax Credit allocation authority.

Proposed law provides that the premium tax credits earned by partnerships, limited liability companies, S-corporations, or other pass through entities can be allocated to the partners, members, or shareholders of such entities and provides that any unclaimed tax credits are transferable to one or more transferees.

Proposed law provides that a QCDE entity seeking to have an equity investment designated as a QEI investment must apply to the Department of Insurance (department) in an application for certification. Proposed law requires the department to grant or deny such application by a QCDE entity within 20 days after receipt. Further requires the department to inform such entity of the grounds for denial of any part of the application, extending such entity the right to provide additional information or to complete its application within 15 days of notice of the denial.

Proposed law requires the department to certify QEI investments in the order in which the applications are received by the department.

Proposed law requires QCDE entities or their transferees to issue the QEI investment within 30 days of receiving notice of certification. Further requires the entities or their transferees to provide the department with evidence of the receipt of the cash investment and the designation of the investment within five business days after receipt. Proposed law provides that in the event that a QCDE entity or its transferee does not receive the cash investment within 30 days of receipt of the certification notice, the certification lapses.

Proposed law further requires the department to recapture the tax credit from the entity that claimed such tax credit following the occurrence of either of the following events:

- (1) Any amount of a federal tax credit available with respect to a QEI investment that is eligible for a credit under proposed law is recaptured under Section 45D of the Internal Revenue Code, as amended. Proposed law requires the department's recapture to be proportionate to the federal recapture.
- (2) The issuer fails to invest an amount equal to 100% of the purchase price of the QEI investment in a QALICI investment in Louisiana within 12 months of the issuance of the QEI investment and to further maintain such level of investment until the last

credit allowance date for the qualified equity investment.

Proposed law provides for a six month cure period before the department recaptures an entity's credits. A recapture can only occur after the entity has been given notice of noncompliance and six months from the date of such notice to cure such noncompliance.

Proposed law requires any QCDE entity seeking to have an equity investment qualified must pay a \$500,000 deposit to the department for deposit in the New Markets performance guarantee account. Proposed law requires the department to hold the \$500,000 deposit in the New Markets performance guarantee account until such time as the entity meets compliance standards set forth by proposed law. Further allows the entity to request a return of such deposit after 30 days of meeting compliance requirements.

Proposed law requires the department, upon request, to issue letter rulings regarding the tax credit program. Further requires the department to seek guidance from Section 45D of the Internal Revenue Code of 1986 in issuing such letter rulings and to respond to such requests within 60 days.

Proposed law requires QCDE entities that issue QEI investments to submit a report to the department within the first five business days after the first anniversary of the initial credit allowance date. Such report must provide documentation as to the investment of 100% of the purchase price in QLICI investments in a QALICB businesses located in Louisiana. Proposed law further requires the entity to submit an annual report to the department within 45 days of the beginning of the calendar year for the compliance period. The report must include the number of employment positions created and retained as a result of the investments and the average annual salary of such positions.

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. 22:832.1)