

2017 Regular Session

HOUSE BILL NO. 641

BY REPRESENTATIVES MCFARLAND, ABRAHAM, DAVIS, HORTON, HUNTER,
HUVAL, JOHNSON, JIM MORRIS, SCHEXNAYDER, STOKES, THIBAUT,
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
17 more intermediaries, controls, is controlled by, or is under common control with
18 another entity. For purposes of this Paragraph, an entity is "controlled by" another
19 entity if the controlling person holds, directly or indirectly, the majority voting or
20 ownership interest in the controlled person or has control over the day-to-day
21 operations of the controlled person by contract or by law.

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

3 (3) "Department" means the Department of Revenue.

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

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

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

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

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

29 (a) Has fewer than one hundred employees.

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

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

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

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

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

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

20 (a) The total investment authority sought by the applicant under the business
21 plan.

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

26 (c) Evidence that as of the date the application is submitted, the applicant or
27 affiliates of the applicant have invested at least one hundred million dollars in
28 nonpublic companies located in nonmetropolitan counties as defined by the Office
29 of Management and Budget within the Office of the President of the United States

1 on the basis of county or county-equivalent units, exclusive of any investments made
2 pursuant to the provisions of this Section.

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

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

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

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

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

25 (a) The application is incomplete.

26 (b) The applicant, or an affiliate of the applicant, is not a rural business
27 investment company or a small business investment company as required by
28 Paragraph (1)(b) of this Subsection and has not previously invested one hundred

1 million dollars in nonpublic companies as required by Paragraph(1)(c) of this
2 Subsection.

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

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

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

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

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

25 (6)(a) Within sixty days of receiving the approval issued under Paragraph (5)
26 of this Subsection, the rural growth fund shall collect all investor contributions and
27 collect additional investments of cash that, when added to the investor contributions,
28 equal to at least the amount of the rural growth fund's investment authority. At least
29 ten percent of the rural growth fund's investment authority shall be comprised of

1 equity investments contributed by affiliates of the rural growth fund, including
2 employees, officers, and directors of such affiliates. Within sixty-five days of
3 receiving the approval issued under Paragraph (5) of this Subsection, a rural growth
4 fund shall send to the department documentation sufficient to prove that the amounts
5 described in this Subparagraph have been collected.

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

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

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

1 anniversary of the closing date, exclusive of any amount carried forward amounts
2 authorized pursuant to Paragraph (2) of this Subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 reinvested by a rural growth fund with the proceeds of repaid or redeemed rural
2 growth fund investments shall not be included in the five million dollar cap.

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

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

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

27 (6) Upon exit from the program in accordance with Paragraph (5) of this
28 Subsection, if the number of jobs created or retained by the rural growth investments

1 is less than the amount projected in the approved application of the rural growth
2 fund, the state shall receive a distribution as follows:

3 (a) If less than sixty percent of the projected number of jobs have been
4 created or retained, then the state shall receive an amount equal to thirty percent of
5 any distribution or payment to an equity holder in an approved rural growth fund that
6 is in excess of the sum of the following:

7 (i) The amount of equity capital invested in the rural growth fund by the
8 equity holder.

9 (ii) An amount equal to the projected increase in the equity holder's federal
10 or state tax liability, including penalties and interest, related to the equity holder's
11 ownership, management, or operation of the rural growth fund.

12 (b) If sixty percent or more, but less than ninety percent, of the projected
13 number of jobs have been created or retained, then the state shall receive an amount
14 equal to fifteen percent of any distribution or payment to an equity holder in an
15 approved rural growth fund that is in excess of the sum of the following:

16 (i) The amount of equity capital invested in the rural growth fund by the
17 equity holder.

18 (ii) An amount equal to the projected increase in the equity holder's federal
19 or state tax liability, including penalties and interest, related to the equity holder's
20 ownership, management, or operation of the rural growth fund.

21 (7) The department shall not recapture a tax credit certificate after a rural
22 growth fund exits from the program.

23 F. A rural growth fund, before making a rural growth investment, may
24 request from the department, a written opinion as to whether the business in which
25 it proposes to invest satisfies the definition of a rural business. The department, not
26 later than the fifteenth business day after the date of receipt of the request, shall
27 notify the rural growth fund of its determination. If the department fails to notify the
28 rural growth fund by the fifteenth business day of its determination, the business in
29 which the rural growth fund proposes to invest shall be considered a rural business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Section 2. This Act shall become effective upon signature by the governor or, if not
12 signed by the governor, upon expiration of the time for bills to become law without signature
13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
15 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 Engrossed

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 Revenue 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 Revenue. 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 authorizes the state to receive a portion of any distribution when a rural growth fund exits the program if the rural growth fund fails to create or retain the number of jobs projected in the application as follows:

- (1) If the number of jobs created or retained is less than 60% of what was proposed, the state shall receive 30% of the distribution amount that is in excess of the sum of the amount the equity holder invested plus the amount of the projected increase in the equity holder's federal and state tax liability due to his participation in the rural growth fund.
- (2) If the number of jobs created or retained is at least 60%, but not greater than 90%, of what was proposed, the state shall receive 15% of the distribution amount that is in excess of the sum of the amount the equity holder invested plus the amount of the

projected increase in the equity holder's federal and state tax liability due to his participation in the rural growth fund.

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 Revenue 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 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 in accordance with the APA.

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

(Adds R.S. 47:6016.2)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Change the department responsible for administering the program from the Dept. of Economic Development to the Dept. of Revenue.
2. Add provisions that allow the state to receive a portion of the distribution at the end of the program if the rural growth investment fails to create or maintain the number of jobs proposed in the application at the time the fund exits the program and provides for the percentage of the distribution to which the state will be entitled.