

2020 First Extraordinary Session

SENATE BILL NO. 13

BY SENATORS WARD AND SMITH

ECONOMIC DEVELOPMENT. Provides for the Louisiana New Markets Jobs Act.
(Item #19) (8/1/20)

1 AN ACT

2 To amend and reenact R.S. 47:6016.1(B), (E)(5) and (7), (F), (G), (H)(1)(b), and (J)(1) and
3 to enact R.S. 47:6016.1(E)(1)(f), relative to the Louisiana New Markets Jobs Tax
4 Credit; to provide relative to eligibility for the credit; to provide for definitions; to
5 provide for an additional allocation of qualified equity investment authority; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:6016.1(B), (E)(5) and (7), (F), (G), (H)(1)(b), and (J)(1) are hereby
9 amended and reenacted and R.S. 47:6016.1(E)(1)(f) is hereby enacted to read as follows:

10 §6016.1. Louisiana New Markets Jobs Act; premium tax credit

11 * * *

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

15 (1)(a) "Applicable percentage" means fourteen percent for the first and
16 second credit allowance dates and eight and one-half percent for the third and fourth
17 credit allowance dates **for all qualified equity investments issued after August 1,**

1 **2013, and before August 1, 2020.**

2 **(b) "Applicable percentage" means fifteen percent for the fourth**
3 **through seventh credit allowance dates for all qualified equity investments**
4 **issued on or after August 1, 2020.**

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

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

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

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

10 **(4) "Impact business" means a qualified active low-income community**
11 **business located in Louisiana that is either located in a rural parish or more**
12 **than fifty percent owned by women, minorities, or military veterans.**

13 ~~(4)~~**(5) "Purchase price" means the amount paid to the issuer of a qualified**
14 **equity investment for such qualified equity investment.**

15 **(6) "Rural parish" means a parish with a population less than one**
16 **hundred thousand as of the July 1, 2019, census estimate by the United States**
17 **Census Bureau.**

18 ~~(5)~~**(7) "Qualified active low-income community business" has the meaning**
19 **given such term in Section 45D of the Internal Revenue Code of 1986, as amended,**
20 **and 26 CFR 1.45D-1. With respect to qualified equity investments issued on or**
21 **after August 1, 2020, a qualified active low-income community business shall**
22 **also be engaged in an industry assigned a primary North American Industry**
23 **Classification System code within sector 11, 21, 23, 31, 32, 33, 42, 48, 49, 54, 56,**
24 **62, 72, or 81 and have total employees that do not exceed the greater of two**
25 **hundred fifty and the number of employees set forth for the business's North**
26 **American Industry Classification System code sector in 13 C.F.R. 121.201.**

27 ~~(6)~~**(8) "Qualified community development entity" has the meaning given**
28 **such term in Section 45D of the Internal Revenue Code of 1986, as amended;**
29 **provided that such entity has entered into, for the current year or any prior year, an**

1 allocation agreement with the Community Development Financial Institutions Fund
2 of the U.S. Department of Treasury with respect to credits authorized by Section 45D
3 of the Internal Revenue Code of 1986, as amended, which includes the state of
4 Louisiana within the service area set forth in such allocation agreement. The term
5 shall include qualified community development entities that are controlled by or
6 under common control with any such qualified community development entity. With
7 respect to qualified equity investments issued on or after August 1, 2020, the
8 term excludes any qualified community development entity that, together with
9 its affiliates, has invested less than one hundred million dollars in Louisiana
10 qualified active low-income community businesses or other Louisiana
11 investments.

12 ~~(7)~~**(9)** "Qualified equity investment" means any equity investment in a
13 qualified community development entity that meets each of the following criteria:

14 (a) Is acquired after August 1, 2013, at its original issuance solely in
15 exchange for cash or, if not so acquired, was a qualified equity investment in the
16 hands of a prior holder.

17 (b) Has at least one hundred percent of its cash purchase price used by the
18 issuer to make qualified low-income community investments in qualified active low-
19 income community businesses located in this state by the first anniversary of the
20 initial credit allowance date with respect to qualified equity investments issued
21 prior to August 1, 2020, and within nine months of the initial credit allowance
22 date with respect to qualified equity investments issued on or after August 1,
23 2020.

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

27 ~~(8)~~**(10)** "Qualified low-income community investment" means any capital or
28 equity investment in, or loan to, any qualified active low-income community
29 business. With respect to any one qualified active low-income community business,

1 the maximum amount of qualified low-income community investments made in that
 2 business, on a collective basis with all of its affiliates that may be counted towards
 3 satisfaction of Subparagraph ~~(7)~~**(9)**(b) of this Subsection is ten million dollars **for**
 4 **qualified equity investments issued prior to August 1, 2020, and five million**
 5 **dollars for qualified equity investments issued on or after August 1, 2020,**
 6 whether issued by one or several qualified community development entities. Any
 7 amounts returned or repaid by such qualified active low-income community business
 8 to a qualified community development entity may be reinvested in such qualified
 9 active low-income community business by such qualified community development
 10 entity and not be counted against the ten million dollar limit provided for in this
 11 Paragraph.

12 ~~(9)~~**(11)** "State premium tax liability" means any liability incurred by any
 13 entity under the provisions of R.S. 22:831, 836, 838, and 842 **except for liability**
 14 **incurred under R.S. 22:842(C).**

15 * * *

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

21 * * *

22 **(f) Evidence that the applicant, on a collective basis with its affiliates, has**
 23 **invested at least one hundred million dollars in Louisiana qualified active**
 24 **low-income community businesses or other Louisiana investments.**

25 * * *

26 ~~(5)~~**(a)** A total of fifty-five million dollars of qualified equity investment
 27 authority shall be available for certification and allocation. The department shall
 28 accept applications beginning on August 1, 2013, for allocation and certification of
 29 up to fifty-five million dollars of qualified equity investments.

1 this Subsection and, thereafter, in accordance with the application process.

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

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

10 (2) ~~The~~ **With respect to qualified equity investments issued before**
11 **August 1, 2020, the** issuer fails to invest an amount equal to one hundred percent of
12 the purchase price of the qualified equity investment in qualified low-income
13 community investments in Louisiana within twelve months of the issuance of the
14 qualified equity investment.

15 (3) **With respect to qualified equity investments issued on or after**
16 **August 1, 2020, the issuer fails to invest an amount equal to one hundred**
17 **percent of the purchase price of the qualified equity investment in qualified**
18 **low-income community investments in Louisiana within nine months of the**
19 **issuance of the qualified equity investment with at least fifty percent of the**
20 **purchase price invested in qualified low-income community investments in**
21 **impact businesses.**

22 (4) ~~The issuer fails to~~ and maintain such ~~level~~ **levels** of investment ~~set forth~~
23 **in Paragraphs (2) and (3) of this Subsection** in qualified low-income community
24 investments in Louisiana until the last credit allowance date for the qualified equity
25 investment. For purposes of this Section, an investment shall be considered held by
26 an issuer even if the investment has been sold or repaid if the issuer reinvests an
27 amount equal to the capital returned to or recovered by the issuer from the original
28 investment, exclusive of any profits realized, in another qualified low-income
29 community investment within twelve months of the receipt of ~~such~~ **the** capital.

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

12 G. Enforcement of the recapture provisions of Subsection F of this Section
 13 shall be subject to a six-month cure period **with respect to qualified equity**
 14 **investments issued before August 1, 2020, and a three-month cure period with**
 15 **respect to qualified equity investments issued on or after August 1, 2020.** No
 16 recapture shall occur until the qualified community development entity has been
 17 given notice of noncompliance by the Department of Insurance and afforded six
 18 months from the date of such notice to cure the noncompliance.

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

24 * * *

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

1 Paragraph (F)(3) of this Section by the nine-month anniversary of the initial
 2 credit allowance date without the benefit of the three-month cure period
 3 established pursuant to Subsection G of this Section.

4 * * *

5 J.(1)(a) Qualified community development entities that issue qualified equity
 6 investments **before August 1, 2020**, shall submit a report to the department within
 7 the first five business days after the first anniversary of the initial credit allowance
 8 date that provides documentation as to the investment of one hundred percent of the
 9 purchase price in qualified low-income community investments in qualified active
 10 low-income community businesses located in Louisiana. ~~Such~~ **The** report shall
 11 include:

12 ~~(a)~~(i) A bank statement of ~~such~~ **the** qualified community development entity
 13 evidencing each qualified low-income community investment.

14 ~~(b)~~(ii) Evidence that ~~such~~ **the** business was a qualified active low-income
 15 community business at the time of such qualified low-income community
 16 investment.

17 **(b) Qualified community development entities that issue qualified equity**
 18 **investments on or after August 1, 2020, shall submit a report to the department**
 19 **within the first five business days after the nine-month anniversary of the initial**
 20 **credit allowance date that provides documentation as to the investment of one**
 21 **hundred percent of the purchase price in qualified low-income community**
 22 **investments in qualified active low-income community businesses, including**
 23 **qualified low-income community investments made in satisfaction of Paragraph**
 24 **(F)(3) of this Section, located in Louisiana. The report shall include:**

25 **(i) A bank statement of the qualified community development entity**
 26 **evidencing each qualified low-income community investment.**

27 **(ii) Evidence that the business was a qualified active low-income**
 28 **community business or impact business at the time of such qualified low-income**
 29 **community investment.**

The original instrument was prepared by Leonore Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by Curry J. Lann.

DIGEST

SB 13 Engrossed

2020 First Extraordinary Session

Ward

Present law provides for the Louisiana New Markets Jobs Act tax credit that 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.

Present 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. Further 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 adds two additional qualifications to the definition of "qualified active low-income community business" by limiting the QALICB to NAICS codes 11, 21, 23, 31, 32, 33, 42, 48, 49, 54, 56, 62, 72, or 81 and limiting the number of employees to no greater of two hundred fifty or the number of employees set forth for the business's NAICS code sector.

- (1) NAICS 11 – Agriculture, Forestry, Fishing and Hunting
- (2) NAICS 21 – Mining
- (3) NAICS 23 – Construction
- (4) NAICS 31 to 33 – Manufacturing
- (5) NAICS 42 – Wholesale Trade
- (6) NAICS 48 and 49 – Transportation and Warehousing
- (7) NAICS 54 – Professional, Scientific, and Technical Services
- (8) NAICS 56 – Administrative and Support and Waste Management and Remediation Services
- (9) NAICS 62 – Health Care and Social Assistance
- (10) NAICS 72 – Accommodation and Food Services
- (11) NAICS 81 – Other Services (except Public Administration)

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

Present law caps the amount of qualified low-income community investment in a qualified low-income community business at ten million dollars.

Proposed law caps the amount of qualified low-income community investment in a qualified low-income community business at five million dollars.

Present law provides that the amount of the tax credit shall be the product of multiplying the amount of the investment purchase price (investment authority) by the following percentages: 14% for the first and second years and 8.5% for the third and fourth years. 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 retains present law provisions for carry forward and transferability of the credit and provides that the amount of the tax credit shall be the product of multiplying the amount of the investment purchase price (investment authority) by the following percentages: 15% for the fourth, fifth, sixth, and seventh years.

Present law authorized a total of \$55 million of investment authority for certification and allocation for the purpose of earning tax credits.

Proposed law authorizes an additional \$100 million of investment authority for certification and allocation for the purpose of earning tax credits.

Present law requires that investments eligible for the award of tax credits be certified by the Dept. of Revenue. If a QCDE applies for certification of investments, 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 the denial.

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

Proposed law retains present law certification and issuance timelines.

Present law provides for conditions under which the Dept. of Insurance shall recapture tax credits that 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 retains present law recapture provisions and adds a recapture condition for investments made on or after August 1, 2020, if there has been a failure to invest an amount equal to 100% of the purchase price of the investment within nine months of the issuance of the investment or less than 50% of the purchase price was invested in "impact businesses".

Proposed law defines "impact business" as qualified active low-income community business either located in a rural parish (population of less than 100,000) or more than fifty percent owned by women, minorities, or military veterans.

Present 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 present law. The deposit is returnable after compliance with the requirements of present law.

Present 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 the positions.

Proposed law retains present law QCDE anniversary date reporting provisions and further authorizes reports to be submitted on the nine-month anniversary date.

Present 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 retains this notification provision.

Effective August 1, 2020.

(Amends R.S. 47:6016.1(B), (E)(5) and (7), (F), (G), (H)(1)(b), and (J)(1); adds R.S. 47:6016.1(E)(1)(f))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Changes required investment percentage in impact businesses from 30% to 50%.