

Regular Session, 2013

ACT No. 265

HOUSE BILL NO. 726 (Substitute for House Bill No. 455 by Representative Leger)

BY REPRESENTATIVE LEGER

1 AN ACT

2 To enact R.S. 47:6016.1, relative to tax credits; to provide with respect to the Louisiana
3 New Markets Jobs Act; to authorize a premium tax credit for investments in low-
4 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. 47:6016.1 is hereby enacted to read as follows:

9 §6016.1. Louisiana New Markets Jobs Act; premium tax credit

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

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) "Applicable percentage" means fourteen percent for the first and second
16 credit allowance dates and eight and one-half percent for the third and fourth credit
17 allowance dates.

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

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

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

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

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

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

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

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

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

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

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

25 (8) "Qualified low-income community investment" means any capital or
 26 equity investment in, or loan to, any qualified active low-income community
 27 business. With respect to any one qualified active low-income community business,
 28 the maximum amount of qualified low-income community investments made in that
 29 business, on a collective basis with all of its affiliates that may be counted towards
 30 satisfaction of Subparagraph (7)(b) of this Subsection is ten million dollars whether

1 issued by one or several qualified community development entities. Any amounts
2 returned or repaid by such qualified active low-income community business to a
3 qualified community development entity may be reinvested in such qualified active
4 low-income community business by such qualified community development entity
5 and not be counted against the ten million dollar limit provided for in this Paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (4) The department shall certify qualified equity investments in the order in
27 which applications are received by the department. Applications received on the
28 same day shall be deemed to have been received simultaneously. For applications
29 that are complete and received on the same day, the department shall certify,
30 consistent with remaining qualified equity investment capacity, the qualified equity

1 investments in proportionate percentages based upon the ratio of the amount of
2 qualified equity investment requested in an application to the total amount of
3 qualified equity investments requested in all applications received on the same day.

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

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

19 (7) Within thirty days of the applicant receiving certification of qualified
20 equity investment authority, the qualified community development entity or any
21 transferee under Paragraph (6) of this Subsection shall issue the qualified equity
22 investment, receive cash in the amount of the certified amount, and designate an
23 amount equal to the certified amount as a federal qualified equity investment with
24 the Community Development Financial Institutions Fund. The qualified community
25 development entity or transferee under Paragraph (6) of this Subsection shall provide
26 the department with evidence of the receipt of the cash investment and designation
27 of the qualified equity investment as a federal qualified equity investment within five
28 business days after receipt. If the qualified community development entity or any
29 transferee pursuant to Paragraph (6) of this Subsection does not receive the cash
30 investment within thirty days following receipt of the certification notice, the

1 certification shall lapse and the entity may not issue the qualified equity investment
2 without reapplying to the department for certification. Lapsed certifications revert
3 back to the department and shall be reissued, first, pro rata to other applicants whose
4 qualified equity investment allocations were reduced pursuant to Paragraph (4) of
5 this Subsection and, thereafter, in accordance with the application process.

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

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

14 (2) The issuer fails to invest an amount equal to one hundred percent of the
15 purchase price of the qualified equity investment in qualified low-income
16 community investments in Louisiana within twelve months of the issuance of the
17 qualified equity investment and maintain such level of investment in qualified low-
18 income community investments in Louisiana until the last credit allowance date for
19 the qualified equity investment. For purposes of this Section, an investment shall be
20 considered held by an issuer even if the investment has been sold or repaid if the
21 issuer reinvests an amount equal to the capital returned to or recovered by the issuer
22 from the original investment, exclusive of any profits realized, in another qualified
23 low-income community investment within twelve months of the receipt of such
24 capital. Periodic amounts received during a calendar year as repayment of principal
25 on a loan that is a qualified low-income community investment shall be treated as
26 continuously invested in a qualified low-income community investment if the
27 amounts are reinvested in another qualified low-income community investment by
28 the end of the following calendar year as set forth in 26 CFR 1.45D-1. An issuer
29 shall not be required to reinvest capital returned from qualified low-income
30 community investments after the sixth anniversary of the issuance of the qualified

1 equity investment, the proceeds of which were used to make the qualified low-
2 income community investment, and the qualified low-income community investment
3 shall be considered held by the issuer through the seventh anniversary of the
4 qualified equity investment's issuance.

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

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

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

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

25 (2) The deposit required by Paragraph (1) of this Subsection shall be
26 deposited with the department and held until such time as compliance with the
27 provisions of this Subsection shall have been established. The qualified community
28 development entity may request a return of the deposit from the department no
29 earlier than thirty days after having met all the requirements of Paragraph (1) of this
30 Subsection. The department shall have thirty days to comply with such request or

1 give notice of noncompliance. In the event the qualified community development
2 entity fails to fulfill the conditions of Subparagraph (1)(a) of this Section, then the
3 amount payable from such deposit shall be retained by the department as self-
4 generated funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____