

2020 First Extraordinary Session

SENATE BILL NO. 13

BY SENATORS WARD, BARROW, BERNARD, BOUIE, CARTER, CLOUD, CORTEZ,
FIELDS, HARRIS, JACKSON, LUNEAU, MCMATH, MILLIGAN,
ROBERT MILLS, MIZELL, PRICE, REESE, SMITH AND TARVER

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

11 §6016.1. Louisiana New Markets Jobs Act; premium tax credit

12 * * *

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

1 credit allowance dates for all qualified equity investments issued after August 1,
2 2013, and before August 1, 2020.

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

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

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

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

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

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

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

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

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

28 ~~(6)~~(8) "Qualified community development entity" has the meaning given
29 such term in Section 45D of the Internal Revenue Code of 1986, as amended;

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

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

21 * * *

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

27 * * *

28 **(f) Evidence that the applicant, on a collective basis with its affiliates, has**
 29 **invested at least fifty million dollars in Louisiana qualified active low-income**

1 **community businesses or other Louisiana investments.**

2 * * *

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

7 **(b) A total of fifty million dollars of qualified equity investment authority**
8 **shall be available for certification and allocation for applications beginning**
9 **August 1, 2020. The department shall accept applications beginning on August**
10 **1, 2020, for allocation and certification of up to fifty million dollars of qualified**
11 **equity investments.**

12 (c) If a pending request cannot be fully certified due to these limits of
13 qualified equity investment authority, the department shall certify the portion of
14 qualified equity investment authority that may be certified unless the qualified
15 community development entity elects to withdraw its request rather than receive
16 partial certification.

17 * * *

18 (7) Within thirty days of the applicant receiving certification of qualified
19 equity investment authority, the qualified community development entity or any
20 transferee under Paragraph (6) of this Subsection shall issue the qualified equity
21 investment, receive cash in the amount of the certified amount; and, **with respect to**
22 **qualified equity investments issued before August 1, 2020,** designate an amount
23 equal to the certified amount as a federal qualified equity investment with the
24 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, **with respect**
27 **to qualified equity investments issued before August 1, 2020,** designation of the
28 qualified equity investment as a federal qualified equity investment within five
29 business days after receipt. If the qualified community development entity or any

1 transferee pursuant to Paragraph (6) of this Subsection does not receive the cash
2 investment within thirty days following receipt of the certification notice, the
3 certification shall lapse and the entity may not issue the qualified equity investment
4 without reapplying to the department for certification. Lapsed certifications revert
5 back to the department and shall be reissued, first, pro rata to other applicants whose
6 qualified equity investment allocations were reduced pursuant to Paragraph (4) of
7 this Subsection and, thereafter, in accordance with the application process.

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

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

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

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

28 **(4) The issuer fails to** and maintain such ~~level~~ **levels** of investment **set forth**
29 **in Paragraphs (2) and (3) of this Subsection** in qualified low-income community

1 investments in Louisiana until the last credit allowance date for the qualified equity
2 investment. For purposes of this Section, an investment shall be considered held by
3 an issuer even if the investment has been sold or repaid if the issuer reinvests an
4 amount equal to the capital returned to or recovered by the issuer from the original
5 investment, exclusive of any profits realized, in another qualified low-income
6 community investment within twelve months of the receipt of ~~such~~ the capital.
7 Periodic amounts received during a calendar year as repayment of principal on a loan
8 that is a qualified low-income community investment shall be treated as continuously
9 invested in a qualified low-income community investment if the amounts are
10 reinvested in another qualified low-income community investment by the end of the
11 following calendar year as set forth in 26 CFR 1.45D-1. An issuer shall not be
12 required to reinvest capital returned from qualified low-income community
13 investments after the sixth anniversary of the issuance of the qualified equity
14 investment, the proceeds of which were used to make the qualified low-income
15 community investment, and the qualified low-income community investment shall
16 be considered held by the issuer through the seventh anniversary of the qualified
17 equity investment's issuance.

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

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

1 * * *

2 (b) The qualified community development entity or any transferee pursuant
 3 to Paragraph (E)(6) of this Section that issues a qualified equity investment certified
 4 pursuant to this Section fails to meet the investment requirement under Paragraph
 5 (F)(2) of this Section by the second credit allowance date of such benefit of the six-
 6 month cure period established pursuant to Subsection G of this Section or
 7 Paragraph (F)(3) of this Section by the nine-month anniversary of the initial
 8 credit allowance date without the benefit of the three-month cure period
 9 established pursuant to Subsection G of this Section.

10 * * *

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

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

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

23 (b) Qualified community development entities that issue qualified equity
 24 investments on or after August 1, 2020, shall submit a report to the department
 25 within the first five business days after the nine-month anniversary of the initial
 26 credit allowance date that provides documentation as to the investment of one
 27 hundred percent of the purchase price in qualified low-income community
 28 investments in qualified active low-income community businesses, including
 29 qualified low-income community investments made in satisfaction of Paragraph

- (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: 5% for the third, 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 \$50 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), (C), (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%.

Senate Floor Amendments to engrossed bill

1. Changes the carryforward period from ten to five years.
2. Changes the investment allocation from \$100 million to \$50 million.
3. Changes the credit percentages from 15% for four years to 5% for five years.