

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: \_\_\_\_\_