

2021 Regular Session

SENATE BILL NO. 208

BY SENATORS FOIL AND SMITH AND REPRESENTATIVES DAVIS AND
WILLARD

TAX/TAXATION. Establishes the Invest Louisiana Small Business Development Fund and authorizes a premium tax credit for small business growth investments made by qualified investors. (1/1/22)

1 AN ACT

2 To enact R.S. 47:6042, relative to tax credits; to create the Invest Louisiana Small Business
3 Development Fund; to provide for the advance purchase of insurance premium tax
4 credits to be used as a funding source for the Fund; to provide for certain definitions;
5 to provide for a maximum fund allocation; to provide for eligibility, application,
6 usage, and recapture; to provide for reporting requirements; to provide for profit
7 sharing with the state when certain return on investment levels are met; to authorize
8 the promulgation of rules; to provide for requirements and limitations; to provide for
9 an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 47:6042 is hereby enacted to read as follows:

12 **§6042. Invest Louisiana Small Business Development Fund**

13 **A. This program shall be known as the "Invest Louisiana Small Business**
14 **Development Fund".**

15 **B. Findings and purpose.**

16 **(1) The legislature finds that across the nation, small businesses account**
17 **for the majority of all new jobs created annually. The Louisiana economy is no**

1 different. Consequently, a need exists for a small business development program
2 that complements existing traditional lending and investment sources to fill the
3 widening gap of financing largely unavailable to the state's many small
4 businesses and startups. Through the establishment of the Small Business
5 Development Fund, this state will attract private investment dollars for
6 qualified small businesses and stimulate growth across a breadth of industries,
7 targeted as high growth sectors in order to diversify and sustain a strong
8 economy in this state.

9 (2) Small and startup businesses in this state have found it difficult to
10 attract capital necessary to make investments that would stimulate economic
11 development activity and create new jobs for the citizens of the state.
12 Consequently, a need exists to attract capital that promotes the retention and
13 expansion of existing jobs, stimulates the creation of new jobs, attracts new
14 business and industry to the state, and stimulates growth in businesses that are
15 active in innovation activities, such as inventions, patents, research and
16 development, and technology commercialization.

17 (3) Through the establishment of a small business development fund tax
18 credit program, the state can take steps to build capital capacity to stimulate
19 venture, growth, and expansion-stage investments, retain and attract new
20 business and industry to the state, create well-paying jobs, and stimulate growth
21 in startup businesses and other early stage businesses that are poised for high
22 growth.

23 C. Definitions.

24 As used in this Section, the following terms have the following meanings:

25 (1) "Capital investment" means any equity investment in the Small
26 Business Development Fund by a regulated insurance company that pays
27 premium tax to the state and meets both of the following:

28 (a) Has one hundred percent of its advance purchase price of tax credits
29 deposited into the Small Business Development Fund to be used to make

1 qualified investments in eligible businesses located in this state within three
2 years of the initial credit allowance date.

3 (b) Is designated by the Small Business Development Fund as a capital
4 investment under this Section and is certified by the department pursuant to
5 Subsection E of this Section.

6 (2) "Credit allowance date" means the date on which a capital
7 investment is made by an insurance company and each of the five subsequent
8 anniversary dates of that date.

9 (3) "Department" means the Department of Economic Development.

10 (4) "Eligible business" means a business that, at the time of the initial
11 qualified investment in the company, meets all of the following criteria:

12 (a) Has less than one hundred employees.

13 (b) Has not more than ten million dollars in net income from the
14 preceding tax year.

15 (c) Has its principal business operations in this state.

16 (d) Is qualified as a Louisiana Entrepreneurial Business pursuant to R.S.
17 47:6020, is engaged in industries related to aerospace, clean energy, biotech, life
18 sciences, information technology, cybersecurity, data analytics, defense,
19 advanced manufacturing, digital media, or, if not engaged in any of these
20 specified industries, the department makes a determination that the investment
21 will be beneficial to the economic growth of the state.

22 (5) "Jobs created" means a newly created position of employment that
23 was not previously located in the state at the time of the qualified investment in
24 the eligible business.

25 (6) "Jobs retained" means a position requiring a minimum of thirty-five
26 hours worked each week that existed prior to the initial qualified investment.
27 Retained jobs shall be counted each year based on the monthly average of
28 employment positions for the applicable year. The number shall not exceed the
29 initial amount of retained jobs reported and shall be reduced each year if

1 employment at the eligible business concern drops below that number.

2 (7) "Principal business operations" means the location where at least
3 sixty percent of a business's employees work or where employees who are paid
4 at least sixty percent of the business's payroll work. A business that has agreed
5 to relocate employees into Louisiana using the proceeds of a qualified
6 investment to establish its principal business operations in a new location shall
7 be considered to have its principal business operations in the new location if it
8 satisfies these requirements no later than one hundred eighty days after
9 receiving a qualified investment.

10 (8) "Purchase price" means the amount paid by a Louisiana-based
11 insurance company to the Small Business Development Fund that issues a
12 capital investment that shall not exceed the amount of capital investment
13 authority certified pursuant to Subsection E of this Section.

14 (9) "Qualified investment" means any equity investment in an eligible
15 business or any loan that is unsecured, subordinate debt, or convertible debt
16 with a stated maturity date of at least five years after the date of issuance. The
17 maximum amount of investments made in any eligible business by one or more
18 small business development funds, on a collective basis with all of the
19 businesses' affiliates, shall be twenty percent of the small business development
20 fund's allocation. No more than forty percent of the small business development
21 funds may be used for debt-based investments.

22 (10) "Small business development fund participant" means an entity
23 certified by the department pursuant to Subsection E of this Section.

24 (11) "Small business development fund investor" means a
25 Louisiana-based insurance company that makes a capital investment in the
26 Small Business Development Fund.

27 (12) "State" means the state of Louisiana.

28 (13) "State tax liability" means any liability incurred by any entity under
29 the provisions of R.S. 22:831, 836, 838, and 842, except for liability incurred

1 under R.S. 22:842(C).

2 D. Tax credit established.

3 (1) Upon making a capital investment in the Small Business Development
4 Fund, a small business development fund investor shall be issued a tax credit
5 certificate evidencing a vested right to a tax credit in an amount equal to one
6 hundred ten percent of the capital investment. The department shall notify the
7 Department of Insurance of the issuance of the tax credit certificate within
8 thirty days of its issuance and shall provide any information requested by the
9 Department of Insurance to administer the taxes imposed by Title 22 of the
10 Louisiana Revised Statutes of 1950.

11 (2) The tax credits shall be utilized against the entity's state tax liability
12 and may be claimed on each credit allowance date of the capital investment in
13 an amount equal to the applicable percentage for the credit allowance date
14 multiplied by the purchase price paid to the small business development fund
15 for the capital investment.

16 (3) The amount of the credit claimed by a small business development
17 fund investor shall not exceed the amount of the entity's state tax liability for
18 the tax year for which the credit is claimed. Any amount of credit that a small
19 business development fund investor is prohibited from claiming in a taxable
20 year as a result of this Section may be carried forward for use in any subsequent
21 taxable year. A small business development fund investor utilizing a credit
22 under this Section is not required to pay any additional retaliatory tax that may
23 arise as a result of claiming the credit.

24 E. Application, approval and allocations.

25 (1) A small business development fund participant that seeks to have an
26 investment certified as a capital investment and eligible for credits under this
27 Section shall apply to the department. The department shall begin accepting
28 applications within one hundred eighty days of January 1, 2022. The small
29 business development fund participant shall include all of the following in their

1 application:

2 (a) The amount of capital investment requested, not to exceed twenty
3 percent of the state's fund authority.

4 (b) A copy of the applicant's or an affiliate of the applicant's license or
5 registration by the applicable state or federal regulatory agency, such as the
6 Louisiana Office of Financial Institutions, the Small Business Administration,
7 or the federal Securities and Exchange Commission.

8 (c) Evidence that, as of the date the application is submitted, the
9 applicant or affiliates of the applicant have invested at least ten million dollars
10 in nonpublic companies over the past five years.

11 (d) At least five years' financial investment experience by the
12 participating fund manager.

13 (e) An estimate of the number of jobs to be created or retained in this
14 state as a result of the applicant's qualified investments.

15 (f) A business plan that includes a revenue impact assessment projecting
16 state and local tax revenue to be generated by the applicant's proposed qualified
17 investment prepared by a third-party, independent firm using a dynamic
18 economic forecasting model that analyzes the applicant's business plan over the
19 ten years following the date the application is submitted to the department.

20 (2) Within thirty days after receipt of a completed application, the
21 department shall grant or deny the application in full or in part. The
22 department shall deny the application if any of the following occur:

23 (a) The applicant does not satisfy all of the criteria described in
24 Paragraph (1) of this Subsection.

25 (b) The revenue impact assessment submitted with the application does
26 not demonstrate that the applicant's business plan will result in a positive
27 economic impact on the state over a ten-year period that exceeds the cumulative
28 amount of tax credits that would be issued to the applicant if the application
29 were approved.

1 (c) The department has already approved the maximum amount of
2 capital investment authority under Paragraph (6) of this Subsection.

3 (3) If the department denies any part of the application, it shall inform
4 the applicant of the grounds for the denial. If the applicant provides any
5 additional information required by the department or otherwise completes its
6 application within fifteen days of the notice of denial, the application shall be
7 considered completed as of the original date of submission. If the applicant fails
8 to provide the information or fails to complete its application within the
9 fifteen-day period, the application remains denied and must be resubmitted in
10 full with a new submission date.

11 (4) If the application is complete, the department shall certify the
12 proposed equity investment as a capital investment that is eligible for credits
13 under this Section, subject to the limitations contained in Paragraph (7) of this
14 Subsection. The department shall provide written notice of the certification to
15 the small business development fund.

16 (5) The department shall certify capital investments in the order that the
17 applications were received by the department. Applications received on the
18 same day shall be deemed to have been received simultaneously.

19 (6) For completed applications that are received on the same day, the
20 department shall certify applications in proportionate percentages based upon
21 the ratio of the amount of capital investments requested in an application to the
22 total amount of capital investments requested in all applications. The
23 department shall not allocate more than twenty percent of the authorized funds
24 to any one participating firm.

25 (7) The department shall certify one hundred million dollars in
26 authorized capital investments pursuant to this Subsection, provided that fifty
27 million dollars of the authorized investments are derived from the advance
28 purchase of state tax credits and fifty million dollars are investments derived
29 from private matching funds required by fund participants.

1 **(8) Within sixty days of the applicant receiving notice of certification, the**
2 **small business development fund participant shall issue the capital investment**
3 **to and receive cash in the amount of the certified amount from a small business**
4 **development fund investor. At least fifty percent of the small business fund**
5 **investor's capital investment shall be composed of capital raised by the small**
6 **business fund investor from private sources, including directors, members,**
7 **employees, officers, and affiliates of the small business fund investor, other than**
8 **the amount of capital invested by the allocatee claiming the tax credits in**
9 **exchange for the allocation of tax credits. The small business development fund**
10 **shall provide the department with evidence of the receipt of the private**
11 **matching capital within ninety days of the applicant receiving notice of**
12 **certification. If the small business development fund does not receive the cash**
13 **investment and issues the capital investment within the time period following**
14 **receipt of the certification notice, the certification shall lapse and the small**
15 **business development fund shall not issue the capital investment without**
16 **reapplying to the department for certification. Lapsed certifications revert to**
17 **the authority and may be reissued pro rata to applicants whose capital**
18 **investment allocations were reduced pursuant to Paragraph (6) of this**
19 **Subsection and then in accordance with the application process. Additionally,**
20 **the department may apply any unallocated funds to future rounds of**
21 **applications.**

22 **F. Tax credit recapture and exit.**

23 **(1) The department may recapture, from a small business fund investor**
24 **that claimed the credit on a tax return, the credit allowed under Subsection E**
25 **of this Section if:**

26 **(a) The small business development fund participant does not invest one**
27 **hundred percent of its capital investment authority in qualified investments in**
28 **this state within three years of the first credit allowance date.**

29 **(b) The small business development fund participant does not meet the**

1 job creation or retention goals stated in its initial application.

2 (2) Recaptured credits and the related capital investment authority
3 revert to the department and shall be reissued pro rata to applicants whose
4 capital investment allocations were reduced pursuant to Paragraph (7) of this
5 Subsection and then in accordance with the application process.

6 (3) Enforcement of each of the recapture provisions of Paragraph (1) of
7 this Subsection shall be subject to a six-month cure period. No recapture shall
8 occur until the small business development fund participant has been given
9 notice of noncompliance and afforded six months from the date of the notice to
10 cure the noncompliance.

11 (4) No eligible business that receives a qualified investment under this
12 Section, or any affiliates of the eligible business, may directly or indirectly do
13 either of the following:

14 (a) Own or have the right to acquire an ownership interest in a small
15 business development fund participant or member or affiliate of a small
16 business development fund, including but not limited to a holder of a capital
17 investment issued by the small business development fund.

18 (b) Loan to or invest in a small business development fund or member
19 or affiliate of a small business development fund participant, including but not
20 limited to a holder of a capital investment issued by a small business
21 development fund, where the proceeds of the loan or investment are directly or
22 indirectly used to fund or refinance the purchase of a capital investment under
23 this Section.

24 (5) On or after the third anniversary of the initial credit allowance date,
25 a small business development fund participant may apply to the department to
26 exit the program and no longer be subject to regulations under this Section. The
27 department shall respond to the exit application within thirty days of receipt.
28 In evaluating the exit application, the fact that no credits have been recaptured
29 and that the small business development fund participant has not received a

1 notice of recapture that has not been cured pursuant to Paragraph (3) of this
2 Subsection shall be sufficient evidence to prove that the small business
3 development fund participant is eligible for exit.

4 (6) At the time a small business development fund participant applies to
5 the department to exit the program, it shall calculate the aggregate internal rate
6 of return of its qualified investments. If the small business development fund
7 participant's aggregate internal rate of return on its qualified investments at
8 exit exceeds ten percent, then, after eligible distributions, the state shall receive
9 ten percent of any distribution or payment in excess of the aggregate ten percent
10 internal rate of return to an equity holder in an approved small business
11 development fund and shall be used solely for the Louisiana Seed Capital
12 Program.

13 (7) The department shall not revoke a tax credit certificate after the
14 small business development fund participant's exit from the program.

15 G. Request for determination.

16 A small business development fund participant, before making a
17 qualified investment, may request from the department a written opinion as to
18 whether the business in which it is proposed to invest is an eligible business. The
19 department, not later than the thirtieth business day after the date of receipt of
20 the request, shall notify the small business development fund participant of its
21 determination. If the department fails to notify the small business development
22 fund participant by the thirtieth business day of its determination, the business
23 in which the small business development fund proposes to invest shall be
24 considered an eligible business.

25 H. Reporting obligations.

26 Each small business development fund participant shall submit a report
27 to the department on or before the fifth business day after the second
28 anniversary of the closing date. The report shall provide documentation as to
29 the small business development fund's qualified investments and include

1 **relevant economic activity as required by the department by rule.**

2 **I. Rules and regulations.**

3 **The department, in consultation with the Department of Insurance, may**
 4 **issue rules and regulations as are necessary to carry out the intent and purpose**
 5 **and implementation of the responsibilities of this Section.**

6 Section 2. This Act shall become effective on January 1, 2022.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 208 Original

2021 Regular Session

Foil

Proposed law establishes the Invest Louisiana Small Business Development Fund.

Proposed law provides for definitions.

Proposed law defines "state tax liability" as any liability incurred by an entity under the provisions of present law relative to property and casualty insurance, retaliatory taxes on insurers, taxes on admitted insurers, or life, accident, health or service insurance, except for liability incurred by Medicaid-enrolled managed care organizations.

Proposed law provides for the advance purchase of tax credits against insurance premium and retaliatory taxes in exchange for a tax credit certificate of 110% of the advance purchase price and provides that the advance purchase price will be deposited into the Fund.

Proposed law provides that the Dept. of Economic Development (LED) will notify the Dept. of Insurance of any tax credit certificates issued and provide any additional information needed by the Dept. of Insurance.

Proposed law provides for an application and approval process for investments from the Fund.

Proposed law provides for a certification process for capital investments and further provides that LED may certify up to \$100 million in authorized capital investments provided that \$50 million of the authorized investments are derived from the advance purchase of state tax credits and \$50 million are investments derived from private matching funds required by fund participants.

Proposed law provides for recapture provisions for the tax credits if a small business development fund participant does not invest all of its capital investment authority in qualified investments within three years or if it does not meet its job creation or retention targets.

Proposed law provides for a process by which a small business development fund participant can exit the program.

Proposed law provides that if a small business development fund participant's aggregate internal rate of return on its qualified investments at exit exceeds 10%, then, after eligible distributions, the state shall receive 10% of any distribution or payment in excess of the aggregate 10% internal rate of return and that these funds shall be used solely for the Louisiana Seed Capital Program.

Proposed law requires small business development fund participant to provide reports to LED with information as required by rule.

Proposed law authorizes LED to promulgate any rules necessary to administer proposed law.

Effective January 1, 2022.

(Adds R.S. 47:6042)