

Regular Session, 2010

SENATE BILL NO. 500

BY SENATORS MARIONNEAUX, ALARIO, APPEL, CHEEK, DORSEY, B. GAUTREAUX, N. GAUTREAUX, HEBERT, JACKSON, LONG, MORRELL, MURRAY, RISER, SHAW AND SMITH

TAX/TAXATION. Authorizes the Department of Economic Development to grant up to \$5 million of rebates per calendar year at the rate of 35% of an investor's investment in "Louisiana Entrepreneurial Business," not to exceed \$1 million per year per business and \$2 million total per business and requires the Louisiana Mega-Project Development Fund to be reduced each fiscal year by an amount which equals the rebates granted. (gov sig)

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AN ACT

To enact Chapter 55 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:3121 through 3124, relative to the Angel Investor Rebate Program; to provide for the purposes; to provide for the amount of the rebate; to provide for the qualifications of the rebate; to provide for reductions in a certain fund equal to the amount of such rebates; to provide for the implementation and administration of the program by the Department of Economic Development; to provide for definitions; to provide for rules; to authorize penalties for providing false or fraudulent information; to require an annual report to the Department of Economic Development by a Louisiana Entrepreneurial Business; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 55 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:3121 through 3124, is hereby enacted to read as follows:

**§3121. Legislative findings and purposes**

**A. The legislature finds that the welfare of the state is enhanced by a healthy entrepreneurial business environment and that ready sources of capital**

1 necessary to support this environment are not currently available.

2 B. This Act is intended to achieve the following purposes:

3 (1) To create the Angel Investor Rebate Program to encourage third  
4 parties to invest in early-stage, wealth-creating businesses in the state.

5 (2) To expand the economy of the state by enlarging its base of wealth  
6 creating businesses.

7 (3) To enlarge the number of quality jobs available to retain the  
8 presence of young people educated in Louisiana.

9 §3122. Angel Investor Rebate Program; establishment; qualifications;  
10 administration

11 A. Qualifying individuals or entities that invest in a Louisiana  
12 Entrepreneurial Business as defined by R.S. 51:2303(5) may earn, apply for,  
13 and be granted a rebate. Such rebate shall be earned and granted for a period  
14 of five tax years as provided in this Chapter. The administration of applications  
15 for these rebates and the provision of these rebates shall be called the Angel  
16 Investor Rebate Program. Nothing in this Chapter shall establish a right of an  
17 investor to receive an angel investor rebate unless approved by the department.

18 B.(1) The Angel Investor Rebate Program shall be implemented and  
19 administered by the Department of Economic Development. In compliance with  
20 the Administrative Procedure Act and this Chapter, the department shall adopt  
21 and promulgate such rules as are necessary for the efficient and effective  
22 administration of this program in keeping with the purposes for which it is  
23 enacted.

24 (2) In providing for the implementation and administration of the  
25 program, the department shall work closely with the secretary of the  
26 Department of Revenue in order to promulgate rules. Such rules shall include  
27 provisions for:

28 (a) The Department of Economic Development to certify the eligibility  
29 of any investor applicant for receipt of the rebate provided for in this Chapter.

1                   **(b) The presentation of a investor's eligibility certification and any other**  
2                   **documentation required to be applied for to earn a rebate.**

3                   **(c) An annual report of the Louisiana Entrepreneurial Business**  
4                   **regarding the use of proceeds, number of employees, amount of payroll, annual**  
5                   **revenue, and any other information requested by the Department of Economic**  
6                   **Development.**

7                   **C.(1) To qualify for an angel investor rebate for five tax years, all of the**  
8                   **following qualifications shall be required by each applicant:**

9                   **(a) The investment in the Louisiana Entrepreneurial Business must be**  
10                  **an investment that is at risk and not secured or guaranteed. "At risk" means**  
11                  **that the repayment of the investment is entirely dependent on the success of the**  
12                  **Louisiana Entrepreneurial Business.**

13                  **(b) For the purposes of this Angel Investor Rebate Program, an angel**  
14                  **investor or investors cannot be the principal owner or owners of the business**  
15                  **who are involved in the operation of the business as a full-time professional**  
16                  **activity nor can their spouses and relatives within the third degree of**  
17                  **consanguinity or affinity. A principal owner means one or more persons who**  
18                  **own an aggregate of fifty percent or more of the Louisiana Entrepreneurial**  
19                  **Business.**

20                  **(c) The use of proceeds from the investment must be used for capital**  
21                  **improvements, plant equipment, research and development, working capital for**  
22                  **the business, or other business activity as may be approved by the Department**  
23                  **of Economic Development. The proceeds cannot be used to pay dividends, repay**  
24                  **shareholder's loans, redeem shares, or repay debt unless approved by the**  
25                  **Department of Economic Development.**

26                  **(d) The investor shall meet the definition of accredited investor**  
27                  **established by the Rule 501 in Regulation D of the General Rules and**  
28                  **Regulations promulgated under the Securities Act of 1933.**

29                  **(e) The investment in the Louisiana Entrepreneurial Business by the**

1 applicant must be maintained for three years unless otherwise approved by the  
2 Department of Economic Development.

3 (2) To qualify for an angel investor rebate the Louisiana  
4 Entrepreneurial Business shall meet all the following requirements:

5 (a) The principal business operations of the business are located in  
6 Louisiana.

7 (b) Prior to the investment by the investor, the business has received  
8 approval as qualified to entitle investors to receive angel investor rebates by the  
9 Department of Economic Development.

10 (c) The Louisiana Entrepreneurial Business must demonstrate that it  
11 will be a wealth-creating business for Louisiana by demonstrating in its business  
12 plan that it will have more than fifty percent of its sales from outside Louisiana.

13 (d) The business is not a business engaged primarily in retail sales, real  
14 estate, professional services, gaming or gambling, a natural resource extraction  
15 or exploration, a franchisee or financial services, including venture capital  
16 funds.

17 §3123. Angel Investor Tax Rebate; amount; duration; forfeit

18 A.(1) Except as provided in Subsection B of this Section, the investor  
19 may earn and apply for and, if qualified, be granted a rebate in the amount  
20 approved by the secretary of the Department of Economic Development for the  
21 amount of money invested by the investor in the Louisiana Entrepreneurial  
22 Business, which shall not exceed one million dollars per year per business and  
23 two million dollars total per business. The rebate shall be allowed for  
24 investments made after January 1, 2010.

25 (2)(a) The rebates approved by the Department of Economic  
26 Development shall be granted at the rate of thirty-five percent of the amount of  
27 money invested by the investor in the Louisiana Entrepreneurial Business, with  
28 the rebates approved and awarded shall be allotted in equal portions for five  
29 years, subject to the limitations provided for in Paragraph (1) of this

1           **Subsection.**

2                   **(b) The total angel investor rebates granted by the Department of**  
3                   **Economic Development in any calendar year shall not exceed five million**  
4                   **dollars irrespective of the year in which they are to be used except as provided**  
5                   **for in this Paragraph. The Department of Economic Development shall by rule**  
6                   **establish the method of allocating available rebates to investors, including but**  
7                   **not limited to a first-come, first-served system, reservation of rebates for a**  
8                   **specified time period, or other method which the department, in its discretion,**  
9                   **may find beneficial to the program.**

10                   **(c) After certifying the eligibility of the Louisiana Entrepreneurial**  
11                   **Business and the amount of the investment, the Department of Economic**  
12                   **Development shall issue a rebate certificate. The rebate shall be payable over**  
13                   **five years with the rebate for the first year payable twenty-four months from**  
14                   **the date that the Department of Economic Development certifies the amount of**  
15                   **investment, and the rebate for each subsequent year shall be payable twelve**  
16                   **months after the prior year's rebate. The rebate certificate shall contain the**  
17                   **investor's name, address, tax identification number, the amount of credit, the**  
18                   **name of the qualifying business, and other information required by the**  
19                   **Department of Revenue. The rebate certificate, unless rescinded by the**  
20                   **Department of Economic Development, shall be accepted by the Department of**  
21                   **Revenue as proof of the rebate. The Department of Economic Development**  
22                   **shall notify the Department of Revenue and shall provide it with a copy of the**  
23                   **rebate. The Department of Revenue may require the investor to submit such**  
24                   **additional information as may be necessary to administer the provisions of this**  
25                   **Chapter.**

26                   **(d) The Department of Economic Development shall maintain a list of**  
27                   **the rebate certificates issued.**

28                   **B. A rebate granted pursuant to the Angel Investor Rebate Program**  
29                   **shall expire and have no value seven years after it was originally granted.**

1            C. If at the close of any calendar year in the five-year period beginning  
2            with the first year in which an angel investor rebate is issued to an investor in  
3            a business, the business is no longer domiciled in Louisiana, the rebate claimed  
4            under this Section shall be recaptured from the business, unless change of  
5            domicile is the result of a merger, consolidation or other acquisition of such  
6            business with or by a party not affiliated with such business.

7            D. If at the close of any calendar year in the three-year period beginning  
8            with the first year in which an angel investor rebate is issued to an investor in  
9            a business, the investor transfers the equity received in connection with a  
10           qualified investment, the rebate claimed under this Section shall be recaptured  
11           from the investor unless the transfer results from the following:

12           (1) The liquidation of the qualified business issuing such equity.

13           (2) The merger, consolidation or other acquisition of such business with  
14           or by a party not affiliated with such business.

15           (3) The death of the investor.

16           §3124. False or fraudulent information in making application, claim for rebate,  
17           or other instrument; penalties

18           A. Any person making an application, claim for an angel investor  
19           rebate, or any report, return, statement, or other instrument or providing any  
20           other information pursuant to the provisions of the Angel Investor Rebate  
21           Program who willfully makes a false or fraudulent application, claim, report,  
22           return, statement, invoice, or other instrument or who willfully provides any  
23           false or fraudulent information, any person who willfully aids or abets another  
24           in making such false or fraudulent application, claim, report, return, statement,  
25           invoice, or other instrument, or any person who willfully aids or abets another  
26           in providing any false or fraudulent information, shall be guilty, upon  
27           conviction, of a felony and shall be punished by the imposition of a fine of not  
28           less than one thousand dollars and not more than fifty thousand dollars or  
29           imprisoned for not less than two years and not more than five years, or both.

1                    **B. Any person convicted of a violation of this Section shall be liable for**  
 2                    **the repayment of all rebates which were granted to that person. Interest shall**  
 3                    **be due on such repayments at the rate of fifteen percent per annum.**

4                    Section 2. Notwithstanding any other provision of law to the contrary, the Louisiana  
 5                    Mega-Project Development Fund provided for in R.S. 51:2365 shall be reduced each fiscal  
 6                    year by an amount which equals the rebate which is awarded pursuant to the provisions of  
 7                    this Act.

8                    Section 3. This Act shall become effective upon signature by the governor or, if not  
 9                    signed by the governor, upon expiration of the time for bills to become law without signature  
 10                    by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 11                    vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 12                    effective on the day following such approval.

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The original instrument was prepared by Danielle Doiron. The following  
 digest, which does not constitute a part of the legislative instrument, was  
 prepared by Ann S. Brown.

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#### DIGEST

Marionneaux (SB 500)

Proposed law establishes the Angel Investor Rebate Program to encourage third party investors in early-stage, wealth-creating businesses, and to provide quality jobs in Louisiana.

Provides for the implementation and administration of the program by the Dept. of Economic Development (DED). Requires DED to promulgate rules for the program.

Provides for definitions and requirements of qualifying investments. Requires "at risk" as meaning that the repayment of the investment is entirely dependent on the success of the Louisiana Entrepreneurial Business. Requires the use of proceeds from the investment to certain purposes unless approved by DED.

Provides that qualifying individuals or entities which invest in Louisiana Entrepreneurial Business as defined by law may apply and be granted a rebate. Authorizes rebates to be granted for five tax years.

Provides for the qualifications of applicants of the program. Authorizes rebates on investments made after January 1, 2010, of not more than \$1 million per year and \$2 million total per business.

Provides that the rebates are equal to 30% of the amount of money invested, divided in equal portions over five years, payable over 5 years with the rebate for the first year payable 24 months from the date that DED certifies the amount of investment. Provides that the rebate for each subsequent year is payable 12 months after the prior year's rebate.

Provides that total credits granted by DED may not exceed \$5 million in any calendar year. Requires the Louisiana Mega-Project Development Fund provided for in R.S. 51:2365 to be

reduced each fiscal year by an amount which equals the rebate which is awarded pursuant to the provisions of the proposed law.

Authorizes DED to issue rebate certificates to approved applicants. Requires DED to maintain a list of certificates issued. Provides that rebate certificates shall expire seven years after being granted.

Authorizes penalties for providing false or fraudulent information in application for rebate.

Requires repayment of rebates from applicant under certain conditions.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 51:3121-3124)

#### Summary of Amendments Adopted by Senate

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

1. Requires the Louisiana Mega-Project Development Fund provided for in R.S. 51:2365 to be reduced each fiscal year by an amount which equals the rebate which is awarded pursuant to the provisions of the proposed law.
2. Deletes the provision authorizing DED to carry forward any of the unused \$5,000,000 cap on rebates in a calendar year.
3. Deletes the provision that the \$5,000,000 annual cap did not apply to "angel pools" and authorizes DED to determine the amount of the rebates for the pools.
4. Provides that the rebates are payable over 5 years with the rebate for the first year payable 24 months from the date that DED certifies the amount of investment and the rebate.

#### Summary of Amendments Adopted by Senate

##### Senate Floor Amendments to engrossed bill.

1. Technical amendments.