

SENATE BILL NO. 265

BY SENATOR RISER

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AN ACT

To enact R.S. 22:832.1 and Chapter 55 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:3121 through 3133, relative to the Louisiana Entrepreneurial Assistance and Development program (LEAD); to create the program; to provide for a tax reduction for investors who make investments of eligible capital under the program; to provide for approval of LEAD funds by the department of economic development and to establish criteria for such approval; to provide for the recovery of certain administrative costs; to provide criteria for issuers in which investments will be made; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:832.1 is hereby enacted to read as follows:

§832.1. Investment tax credit

A. An investor who makes an investment of eligible capital pursuant to R.S. 51:3121, et seq., shall, in the year that the secretary of the Louisiana Department of Economic Development receives the written certification provided for in R.S. 51:3123(7) that the investment will achieve revenue neutrality, earn a vested premium tax credit equal to seventy-five percent of the amount of the investment. The premium tax credit shall be available for but not limited to, taxes charged on insurance premiums under R.S. 22:831, 836, 838, and 842. Notwithstanding any other provision of law to the contrary, the premium tax credit shall not be available for taxes charged on insurance premiums under R.S. 22:345, 439, 833, 835, 837, and 1476.

B. In any one taxable year, no more than twenty-five percent of the total premium tax credit earned with respect to a particular investment described in Subsection A of this Section may be used, provided that:

(1) An insurer may not utilize credits in any taxable year in excess of its

1 premium tax liability for such taxable year.

2 (2) The premium tax credits shall not initially be applicable against
3 premium tax liability generated in any calendar year until the third calendar
4 year after the year in which the investment of eligible capital was made
5 pursuant to R.S. 51:3121, et seq.

6 (3) The premium tax credit shall not be applicable against any estimated
7 premium tax payments due prior to April 15, 2015.

8 C. Subject to the limitations in Paragraph (B)(1) of this Section,
9 premium tax credits available under this Section may be carried forward for
10 use in future years.

11 D.(1) Any investor who holds a premium tax credit described in this
12 Section shall be allowed to transfer such credits to any insurance company
13 subject to the forfeiture provisions of R.S. 51:3121, et seq. Within thirty days
14 after the transfer of tax credits, the original holder of the tax credits shall notify
15 the department in writing of all of the following information:

16 (a) The name of the new holder of the tax credits.

17 (b) The amount of tax credits transferred.

18 (c) The price of such tax credits.

19 (d) The date the transfer occurred.

20 (e) The tax identification number of the transferee.

21 (f) The remaining balance of credits held by the transferor.

22 (2) In the event such notice is not received by the Department of
23 Insurance within the thirty-day period, the transfer of sale shall be void.

24 Section 2. Chapter 55 of Title 51 of the Louisiana Revised Statutes in 1950,
25 comprised of R.S. 51:3121 through 3133 is hereby enacted to read as follows:

26 CHAPTER 55. LOUISIANA ENTREPRENEURIAL

27 ASSISTANCE AND DEVELOPMENT

28 §3121. Short title

29 This Chapter may be cited as the "Louisiana Entrepreneurial Assistance
30 and Development" program.

1 §3122. Findings

2 A. The legislature recognizes the need to bring venture and expansion
3 capital to the entrepreneurs of Louisiana to combat the current economic
4 downturn and resulting difficulties in securing capital from traditional sources.

5 B. The legislature further finds that to ensure the Louisiana-based
6 development of the small and medium sized businesses that have traditionally
7 created the vast majority of new jobs nationwide, it is in the public interest of
8 the state to enact the Louisiana Entrepreneurial Assistance and Development
9 program (LEAD) to provide an incentive to attract venture and expansion
10 capital to eligible businesses.

11 §3123. Definitions

12 As used in this Chapter, the following terms shall have the following
13 meanings, unless the context clearly indicates otherwise:

14 (1) "Allocation date" means the date a LEAD fund receives an
15 investment of eligible capital equaling the amount of eligible capital allocated
16 to its investors pursuant to this Chapter.

17 (2) "Department" means the Louisiana Department of Economic
18 Development.

19 (3) "Eligible business" means a business to which all of the following
20 apply:

21 (a) At the time of a LEAD fund's initial investment therein, meets all of
22 the following criteria:

23 (i) A business which employs one hundred or fewer full-time employees.

24 (ii) A business which has at least eighty percent of its employees
25 domiciled in Louisiana or at least eighty percent of its payroll paid to employees
26 domiciled in Louisiana.

27 (iii) A business that is not engaged in any of the following: retail sales,
28 real estate development, gaming, natural resource extraction or exploration,
29 insurance, banking or lending or the provision of professional services provided
30 by accountants, lawyers, or physicians.

1 **(b) A business which has either a net worth of less than five million**
2 **dollars at the time of such investment or had a net income of fifteen million**
3 **dollars or less in the fiscal year immediately preceding such investment.**

4 **(4) "Eligible capital" means an investment of cash by an investor in a**
5 **LEAD fund that fully funds the purchase price of an equity interest in the**
6 **LEAD fund or a debt instrument issued by a LEAD fund, at par value or a**
7 **premium, that meets all of the following criteria:**

8 **(a) Has an original maturity date at least five years after the date of**
9 **issuance.**

10 **(b) Has a repayment schedule that is not faster than a level principal**
11 **amortization over five years.**

12 **(c) Has no interest, distribution or payment features tied to the**
13 **profitability or to the success of the investments of the LEAD fund until all of**
14 **the requirements of R.S. 51:3130(A) have been satisfied.**

15 **(5) "LEAD fund" means a Louisiana partnership, corporation, trust or**
16 **limited liability company, whether organized on a profit or non-profit basis that**
17 **meets all of the following criteria:**

18 **(a) Fund is managed by at least two principals or persons domiciled in**
19 **Louisiana that have at least five years of experience each in managing venture**
20 **capital or private equity funds, with at least fifteen million dollars of such funds**
21 **having been invested by persons that are unaffiliated with such principals or**
22 **persons.**

23 **(b) Fund has received an equity investment of capital other than eligible**
24 **capital equal to at least two hundred and fifty thousand dollars.**

25 **(c) Fund is not, or will not be after the receipt of eligible capital,**
26 **controlled by or under common control with one or more insurance companies.**
27 **The definition criteria contained in this Subparagraph do not preclude an**
28 **insurance company from exercising its legal rights and remedies, including**
29 **interim management of a LEAD fund with respect to a LEAD fund that is in**
30 **default of its statutory or contractual obligations to the insurance company or**

1 establishing controls to ensure that the LEAD fund satisfies the requirements
2 of this Chapter. An investment of eligible capital shall not be deemed to result
3 in insurance company control unless such investment exceeds forty million
4 dollars with respect to any one investor.

5 (6) "Match" means a cash investment in an eligible business either
6 contemporaneous with or subsequent to an investment of eligible capital by a
7 LEAD fund in such eligible business, other than an investment made with
8 eligible capital either from the LEAD fund or from another LEAD fund.

9 (7) "Revenue neutrality" means that both the division of administration
10 and the legislative fiscal office provide written certification to the secretary that
11 they reasonably estimate that the cost to the state of the premium tax credit
12 provided to the investor pursuant to R.S. 22:832.1 will be offset by the economic
13 impact on the state because of the premium tax credit provided by that Section.

14 (8) "Secretary" means the secretary of the Louisiana Department of
15 Economic Development.

16 §3124. Premium tax credits

17 An investor who makes an investment of eligible capital in a LEAD fund
18 that is approved by the department pursuant to R.S. 51:3125 shall earn a vested
19 premium tax credit pursuant to R.S. 22:832.1 in the year when the secretary
20 receives the written certification provided for in R.S. 51:3123(7) that the
21 investment will achieve revenue neutrality. The premium tax credit is earned
22 and vested in such year but is subject to the rules on utilization set forth in R.S.
23 22:832.1 and the forfeiture provisions of R.S. 51:3131.

24 §3125. Application for certification

25 A. On or before November 1, 2011, the secretary shall begin to accept
26 applications for certification as a LEAD fund and for allocations of eligible
27 capital and tax credits under this Section. Each application shall contain all of
28 the following information:

29 (1) The amount of eligible capital the applicant proposes to raise.

30 (2) Evidence that the applicant satisfies the requirements for a LEAD

1 fund pursuant to R.S. 51:3123(5)(b).

2 (3) An affidavit by each investor committing to an investment of eligible
3 capital.

4 (4) A business plan detailing all of the following:

5 (a) The approximate percentage of eligible capital the applicant will
6 invest in eligible businesses by the second, fourth, sixth, and eighth
7 anniversaries of its allocation date.

8 (b) The stage of development and industry segments listed by the North
9 American Industrial Classification code in which the applicant will invest.

10 (c) The types of investments the applicant will make, including but not
11 limited to debt, equity, convertible debt or debt with equity-like features.

12 (5) A revenue impact assessment prepared by an independent third
13 party contracted by the department and paid for by the applicant
14 demonstrating that the applicant's investments, if made in accordance with its
15 business plan, will have a positive or neutral revenue impact on the state taking
16 into account the amount and timing of tax credits earned by investors of eligible
17 capital in the LEAD fund and the match of one hundred percent of the eligible
18 capital invested by the applicant, which assessment shall include the applicant's
19 estimate of the number of jobs that will be created or retained as a result of the
20 applicant's investments and matching investments.

21 (6) Any offering material involving the sale of securities of the LEAD
22 fund, which offering material must include the following statements: "The state
23 of Louisiana is not liable for damages to an investor in an issuer participating
24 in the Louisiana Entrepreneurial Assistance and Development (LEAD)
25 program. Use of the word 'Louisiana' or other terms used in conjunction with
26 the LEAD program in an offering does not constitute a recommendation or
27 endorsement of the investment by the Louisiana Department of Economic
28 Development."

29 B.(1) Not later than the thirtieth day after the date an application for
30 certification is filed, the secretary shall do either one of the following:

1 (a) Issue the certification and notify the applicant of the amount of
2 eligible capital and associated tax credits allocated to its investors.

3 (b) Refuse to issue the certification and communicate in detail to the
4 applicant the grounds for the refusal.

5 (2) If an applicant submits an amended application within fifteen days
6 of receipt of refusal from the department, the department shall have fifteen
7 days from the receipt of such amended application by which to communicate its
8 approval or refusal of such amended application to the applicant.

9 C.(1) Applications for tax credits pursuant to this Section shall be
10 accepted and approved on a first-come, first-served basis with all applications
11 received on the same date deemed to be received simultaneously.

12 (2) The secretary may not allocate more than two hundred million in
13 eligible capital under this Chapter.

14 (3) If applicants for tax credits received by the department on any date
15 exceed the total amount of approval authority remaining under this Chapter on
16 such date, the eligible capital and associated tax credits shall be allocated on a
17 per applicant basis with each applicant being allocated eligible capital and
18 associated tax credits equal to the total amount of requests received for that day
19 divided by the total amount of applicants filing applications on such date that
20 were approved. If the allocation results in one or more applicants receiving an
21 allocation in excess of the amount that was requested, such excess shall be
22 reallocated to the remaining applicants from that date on an equal basis until
23 the entirety of the allocation has been fully distributed. All applicants that
24 share common management or are under common control, whether the
25 management or control is accomplished directly or indirectly, shall be treated
26 as a single applicant.

27 D. Any applicant who receives an allocation of eligible capital shall bear
28 any cost, not to exceed fifteen thousand dollars per fiscal year for each
29 applicant, which is allocated to it by the secretary to ensure that all costs of the
30 Louisiana Department of Economic Development associated with administering

1 the program are reimbursed. The secretary shall allocate such costs based upon
2 the proportion that the applicant's allocation of eligible capital bears to the total
3 amount of eligible capital allocated. The amounts collected by the secretary
4 shall be appropriated to the Louisiana Department of Economic Development.

5 §3126. Report upon receipt of eligible capital

6 Each LEAD fund shall report the following items to the secretary:

7 (1) The name of each investor from whom eligible capital was received,
8 including the investor's tax identification number.

9 (2) The amount of eligible capital received from each investor.

10 (3) The date on which the eligible capital was received. If a LEAD fund
11 does not receive an investment of eligible capital equaling the amount of eligible
12 capital allocated to it pursuant to R. S. 51:3125(B) prior to the fifth business day
13 after receipt of certification, the LEAD fund shall notify the secretary by
14 overnight common carrier delivery service and that portion of eligible capital
15 allocated to the investor shall be forfeited. Any forfeited eligible capital shall
16 be reallocated pursuant to R.S. 51:3125, provided that if such forfeited eligible
17 capital was subject to an allocation in accordance with R.S. 51:3125(C), it shall
18 be reallocated first to investors in the other LEAD funds affected by such
19 allocation.

20 §3127. Department approval of investments in eligible businesses; eligible
21 businesses

22 A.(1) Prior to making any initial investment in a potential eligible
23 business, a LEAD fund shall request a written opinion from the department as
24 to whether the business in which it proposes to invest is an eligible business,
25 including whether such investment is consistent with the LEAD fund's business
26 plan and satisfies the requirement of R.S. 51:3130(A)(2).

27 (2) The department shall have fifteen days either to grant the written
28 opinion or to deny the request, in which case it shall give the reasons for its
29 denial.

30 (3) If the department fails to respond within the fifteen-day period set

1 forth above, the proposed investment shall be deemed to be made in an eligible
2 business that is consistent with the LEAD fund's business plan and that satisfies
3 the requirement of R.S. 51:3130(A)(2) if a written opinion was requested as to
4 satisfaction of that requirement.

5 B. A LEAD fund may not invest more than fifteen percent of its eligible
6 capital in any one eligible business without prior written approval of the
7 secretary.

8 §3128. Maintenance of certification

9 To maintain certification, a LEAD fund shall accomplish all of the
10 following items:

11 (1) Comply with the investment parameters set forth in its business plan,
12 provided a LEAD fund may apply to the secretary to amend its business plan
13 based on unavoidable or reasonably unanticipated changes to various
14 conditions, including but not limited to the general economic climate of the state
15 of particular sectors of the economy, technological advances and high
16 employment and revenue growth opportunities, with approval for such changes
17 not to be unreasonably withheld by the secretary.

18 (2) Invest twenty-five percent of its eligible capital in eligible businesses
19 by the second anniversary of its allocation date.

20 (3) Invest fifty percent of its eligible capital in eligible businesses by the
21 fourth anniversary of its allocation date.

22 (4) Invest one hundred percent of its eligible capital in eligible businesses
23 by the tenth anniversary of its allocation date and satisfy the requirement of
24 R.S. 51:3130(A)(2). A LEAD fund shall invest eligible capital only in eligible
25 businesses, bank deposits, certificates of deposit or other debt securities issued
26 or guaranteed by investment-grade issuers or money market, mutual or
27 exchange traded funds whose investments are limited to the foregoing.

28 §3129. Annual reporting

29 Not later than January thirty-first annually, each LEAD fund shall
30 provide a written report to the secretary and to the Senate Committee on

1 Revenue and Fiscal Affairs and the House Committee on Ways and Means of
2 all of the following items:

3 (1) The amount of eligible capital remaining at the end of the preceding
4 year to be invested in eligible businesses and, with respect to each eligible
5 business, its location and two-digit North American Industrial Classification
6 System code.

7 (2) The percentage of eligible capital invested in businesses that meet the
8 requirement of R.S. 51:3130(A)(2).

9 (3) All distributions made by the LEAD fund in the preceding year.

10 (4) The number of jobs created or retained as a result of the LEAD
11 fund's investments in eligible businesses during the preceding year. Each
12 LEAD fund shall provide to the secretary an annual audited financial statement
13 not later than June thirtieth of each year.

14 §3130. Distributions

15 A. To make a distribution or payment, other than those listed in
16 Subsection B of this Section, a LEAD fund shall have accomplished all of the
17 following items:

18 (1) Invested one hundred percent of its eligible capital in eligible
19 businesses.

20 (2) Invested at least fifty percent of its eligible capital in eligible
21 businesses that are either one of the following:

22 (a) Engaged in the development of initial product or service offerings,
23 such as prototype development or establishment of initial production or service
24 processes.

25 (b) Within one of the following industry segments: digital media or
26 software development, next-generation automobiles, specialty health care,
27 renewable energy or energy efficiency, water management or next-wave oil and
28 gas, or other industry segments approved by the secretary.

29 (3) The LEAD fund shall have achieved a match amount, that when
30 added to any investments in eligible businesses made by the LEAD fund in

1 excess of one hundred percent of its eligible capital, equals at least one hundred
2 percent of the LEAD fund's eligible capital.

3 B. At any time, a LEAD fund is authorized to make any one of the
4 following items:

5 (1) Distributions related to the payment of any projected increase in
6 federal or state taxes, including penalties and interest related to state and
7 federal income taxes, of the equity owners of the LEAD fund resulting from the
8 earnings or other tax liability of the LEAD fund to the extent that the increase
9 is related to the ownership, management, or operation of the LEAD fund.

10 (2) Payments of interest and principal on the debt of the LEAD fund,
11 subject to the limitation of R.S. 51:3123(4)(c).

12 (3) Payments related to the reasonable costs and expenses of forming,
13 syndicating, managing, and operating the fund, provided the distribution or
14 payment is not made directly or indirectly to an investor that has invested
15 eligible capital in the LEAD fund, including all of the following items:

16 (a) Reasonable and necessary fees paid for professional services,
17 including legal and accounting services, related to the formation and operation
18 of the LEAD fund.

19 (b) An annual management fee in an amount that does not exceed two
20 and one-half percent of the eligible capital of the LEAD fund, provided that a
21 LEAD fund may not pay management fees after the tenth anniversary of its
22 allocation date if it has not met the requirements set forth in R.S. 51:3128(4).

23 C. The state shall receive ten percent of any distribution, other than
24 distributions described in Subsection B of this Section and distributions made
25 to return any equity capital invested in the LEAD fund that is not eligible
26 capital. The state's distribution percentage shall increase to either of the
27 following:

28 (1) Twenty percent if less than eighty percent and more than sixty
29 percent of the jobs set forth in the LEAD fund's business plan are created and
30 retained.

1 (2) Forty percent when sixty percent or less of the jobs set forth in the
2 LEAD fund's business plan are created or retained.

3 §3131. Decertification and forfeiture

4 A.(1)(a) The secretary shall review each annual report to ensure
5 compliance with R.S. 51:3128, 3129, and 3130.

6 (b) In addition, the legislative auditor may audit any LEAD fund, the
7 eligible businesses in which the LEAD fund has invested, and any investor
8 which has earned a premium tax credit from the investment of eligible capital
9 pursuant to this Chapter to ensure compliance with R.S. 51:3128, 3129, and
10 3130 and R.S. 22:832.1 and any other provision of this Chapter.

11 (2) A material violation of R.S. 51:3128, 3129, or 3130 shall be grounds
12 for decertification of a LEAD fund.

13 (3) If the secretary determines or is provided written notification by the
14 legislative auditor that a LEAD fund is not in compliance with R.S. 51:3128,
15 3129, or 3130, the secretary shall notify the officers of the LEAD fund, in
16 writing, that the LEAD fund may be subject to decertification after the one
17 hundred twentieth day after the date of mailing of the notice, unless the
18 deficiencies are waived by the secretary or are corrected and the LEAD fund
19 returns to compliance. For purposes of this Paragraph, the failure of an eligible
20 business to meet the qualifications of this Chapter or to be otherwise in violation
21 of any provision of this Chapter, or of an investor which has earned a premium
22 tax credit from the investment of eligible capital pursuant to this Chapter to
23 comply with the requirements of this Chapter or R.S. 22:832.1 shall be
24 considered noncompliance by the LEAD fund.

25 B. Decertification of a LEAD fund prior to its investment of at least fifty
26 percent of its eligible capital in eligible businesses shall cause the forfeiture of
27 all tax credits earned under this Chapter. Upon satisfaction of the requirement
28 of R.S. 51:3128(3), tax credits earned under this Chapter are no longer subject
29 to recapture or forfeiture.

30 C.(1) Upon satisfying the requirements of R.S. 51:3128(3) and (4), a

1 LEAD fund shall provide notice to the department. The department shall,
2 within sixty days of receipt of such notice, either confirm that the LEAD fund
3 has satisfied such requirement as of such date or provide notice of
4 noncompliance and an explanation of any existing deficiencies.

5 (2) If the department does not provide such notification within sixty
6 days, the LEAD fund shall be deemed to have met all requirements of R.S.
7 51:3128(3) and (4).

8 (3) Except for distributions made pursuant to R.S. 51:3130(C), a LEAD
9 fund that has satisfied the requirement set forth in R.S. 51:3128(4) shall no
10 longer be subject to regulation under this Chapter.

11 §3132. Administration of the program

12 A. The department shall be responsible for all of the following:

13 (1) Maintaining and interpreting policy pursuant to the provisions of
14 this Chapter.

15 (2) Performing the regulatory and examination functions pursuant to
16 the provisions of this Chapter.

17 (3) Providing for the implementation and administration of the
18 Louisiana Entrepreneurial Assistance and Development program.

19 B.(1) The department shall have the authority to adopt, in accordance
20 with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.,
21 rules and regulations concerning the implementation and regulation of the
22 Louisiana Entrepreneurial Assistance and Development program.

23 (2) The department shall issue advisory rulings, as requested, provided
24 that each advisory ruling is limited to the specific facts outlined in the request
25 and may be relied upon only by the specific requestor of the ruling.

26 §3133. Report to legislative committees

27 The department shall file an annual report with the House Committee
28 on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs
29 regarding the manner in which all LEAD funds which have received eligible
30 capital have invested such capital; the manner in which eligible businesses have

1 the investments been made and the amount thereof; the jobs created by and the
2 success or failure of such eligible businesses; the share received by the state of
3 LEAD fund distributions; and whether the investment tax credit has achieved
4 "revenue neutrality", that is, the cost to the state of the credit will be offset by
5 the economic impact on the state.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

VETO MESSAGE

Senate Bill No. 265 by Senator Riser creates a 75% premium tax credit for insurance companies investing in certified funds. Up to \$150 million total in tax credits can be claimed.

LED has concerns that a 75% tax credit ensures a nearly risk-free return for investors and runs counter to the premise of a venture capital program. While I respect the intent of this legislation, I believe there are more critical economic development programs to which we should dedicate state resources at this time. During the 2011 Regular Session, I supported the renewal of several incentive programs which create jobs, attract business investment, encourage intellectual property development, and revitalize historic and downtown areas.

It is important that we protect scarce resources for priorities like healthcare and higher education. For this reason, I have vetoed Senate Bill No. 265 and hereby return it to the Senate.