

seven working days in advance of the hearing. For Assistance, call (225) 342-4120 (Voice and TDD).

Marketa Garner-Walters
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Residential Home**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change is anticipated to increase expenditures for the Department of Children and Family Services (DCFS) by approximately \$2.3-3 in FY 19 for the publication of the proposed rule. It is not anticipated that any other state or local governmental units will incur costs or savings as a result of this rule change.

The proposed rule amends LAC 67: V, Subpart 8, Residential Licensing, Chapter 7, Residential Homes—Type IV, Sections 7109, 7111, and 7119. This amendment updates the definition of a critical incident and clarifies that the timeline for reporting critical incidents is one calendar day excluding weekends and state holidays. This amendment also updates the procedures for reporting critical incidents in residential care facilities by providing that these incidents must be reported in writing to DCFS licensing and that they can no longer be reported through the child protection hotline. Finally, this rule specifies that interior and exterior doors in residential care facilities shall not be locked, except under certain conditions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the proposed rule will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule will have no cost or economic benefit to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule has no known effect on competition and employment.

Terri Ricks
Deputy Secretary
1808#035

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Economic Development
Office of the Secretary**

**Research and Development Tax Credit Program
(LAC 13:I.Chapter 29)**

Under the authority of R.S. 47:6015 and R.S. 36:104, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development proposes to amend LAC 13:I.2901 relative to the administration of the research and development tax credit program.

The purpose of this regulation is to implement legislative changes to the research and development tax credit program under R.S. 47:6015 as enacted by Act 336 of the 2017 Regular Session of the Legislature.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 29. Research and Development Tax Credit §2903. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6015 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

Credit Certification—a certification by LED of the amount of the research and development tax credit earned by a person for a particular tax year.

Custom Manufacturing or Custom Fabricating—the business of companies (custom fabricators and/or manufacturers) that assemble, fabricate, or manufacturer parts, equipment, assemblies, vessels, software or other products (“specified item”) in response to specific design criteria and delivery schedule provided by the customer/client.

a. The typical business model acquisition process utilized by custom fabricators and/or manufacturers is as follows:

i. the customer/client providing the custom fabricator and/or manufacturer with the detail specific design criteria for the specified item in a document generally referred to as a “request for proposal”;

ii. after review and analysis, the custom fabricator and/or manufacturer submits a “proposal” to the customer/client in which they commit to a specific price and delivery schedule to assemble, fabricate, or manufacturer the specified item requested by the customer/client in their request for proposal;

iii. if the proposal is acceptable, the customer/client will generally issue a “purchase order” commitment document to the custom fabricator and/or manufacturer agreeing to the terms of their proposal, and authorizing the custom fabricator or manufacturer to begin work per their proposal; and

iv. although the custom fabricator or manufacturer generally commits to a fixed price to produce the requested item, they have effectively negated most, if not all, material or unusual commercial transaction risks by their ability to analyze the required design criteria before committing to a specific price and delivery schedule within their proposal.

Professional Services Firm—a firm who is primarily engaged in work which requires specialized education, knowledge, labor, judgment or is predominantly mental or intellectual in nature; and which may require the holding of a professional license. These types of firms engage in activities which include, but are not limited to, architecture, engineering, legal services and accounting.

Qualified Research Expenses in the State—expenses for qualified research as defined under 26 U.S.C. §41(d) (“qualified research”) that are qualified research expenses under 26 U.S.C. §41(b) (“qualified research expenses”) and meet the following requirements:

a. - d. ...

e. 26 U.S.C. §41(d) also excludes expenditures associated with certain activities from the definition of qualified research. These activities include:

i. - vi. ...

Research and Development Tax Credits—credits against Louisiana income or corporation franchise taxes that are earned by a person pursuant to the provisions of the Research and Development Tax Credit Program provided by R.S. 47:6015.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division. LR 30:977 (May 2004), amended by the Office of the Secretary, LR 38:351 (February 2012), amended by the Office of Business Development, LR 40:49 (January 2014), LR 40:1525 (August 2014), amended by the Department of Economic Development, Office of the Secretary, LR 44:

§2904. Type, Amount and Duration of Credit

A. Type. Any taxpayer meeting the following criteria shall be allowed a tax credit to be applied against income and corporation franchise taxes due:

1. employs 50 or more persons (including affiliates) and claims for the taxable year a federal income tax credit under 26 U.S.C. §41(a) for increasing research activities;

2. employs less than 50 persons (including affiliates), and claims for the taxable year a federal income tax credit under 26 U.S.C. 41(a) for the taxable year, or incurs qualified research expenses for the taxable year, as defined in 26 U.S.C. §41(b); and

3. receives a small business innovation research grant, as defined in R.S. 47:6015(D).

B. Amount. The amount of the credit authorized shall be equal to:

1. 5 percent of the difference between the qualified research expenses in the state for the taxable year minus the base amount, if the applicant is an entity that employs 100 or more persons (including affiliates); or

2. 10 percent of the difference, between the Louisiana qualified research expenses in the state for the taxable year minus the base amount, if the applicant is an entity that employs 50 to 99 persons (including affiliates); or

3. 30 percent of the state's apportioned share of the taxpayer's qualified research expenses in the state if the applicant is an entity that employs fewer than 50 persons (including affiliates); or

4. 30 percent of the small business innovation research grant award received during the tax year.

C. Duration. No credit shall be allowed for research expenditures incurred, small business technology transfer program funds received, or small business innovation research grant funds received after December 31, 2021.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:1768 (August 2010), amended by the Office of the Secretary, LR 38:351 (February 2012), amended by the Office of Business Development, LR 40:50 (January 2014), LR 40:1526 (August 2014), amended Office of the Secretary, LR 42:42 (January 2016), LR 44:

§2905. Certification of Amount of Credit

A. Prior to claiming a research and development tax credit on any tax return or selling any research and development tax credit, a person must apply for and obtain a credit certification from LED.

B. The application for a credit certification shall be submitted on a form provided by the LED and shall include, but not be limited to the following information:

1. an application fee equal to 0.5 percent of the amount of the tax credits applied for, with a minimum of \$500 and a maximum of \$15,000, payable to Louisiana Department of Economic Development;

2. appropriate supporting documentation:

a. for taxpayers employing 50 or more residents, a federal income tax return and evidence of the amount of federal research credit for the same taxable year;

b. for taxpayers employing up to 50 residents:

i. either:

(a) a federal income tax return and evidence of the amount of federal research credit for the same taxable year; or

(b) a request that LED enter into an attest engagement with a certified public accountant ("CPA") authorized to practice in Louisiana or a tax attorney who is selected by LED for a report that focuses on verification of the applicant's expenditures and claimed qualified research activities as well as pay the deposit for such report in accordance with R.S. 36:104.1 and 47:6015; and

ii. evidence of the amount of qualified research expenses for the same taxable year;

c. for taxpayers claiming credits based upon the federal small business innovation research grant, evidence of the amount of such grant;

d. the LED may also require documentation, including but not limited to the following, as proof of an expenditure prior to certification:

i. wages:

(a) copy of W-2 for each employee who participates in qualifying research and development activities;

(b) percentage of each employee's salary that is dedicated to qualifying research and development activities; and

(c) Louisiana Workforce Commission quarterly report of wages paid for the company for the third and fourth quarter of the tax year in question;

ii. supplies:

(a) invoices with date of purchase included;

iii. contracted research:

(a) invoices with applicable dates or periods of work; and

(b) contracts for the research to be performed;

e. in order for any research and development project to qualify, the requesting company must identify:

i. the business component that was developed or improved;

ii. the uncertainty that existed in the capability, method or design related to such business component;

iii. how the research was technological in nature;

and

- iv. the process of experimentation undertaken;
- 3. the total amount of qualified research expenses and the qualified research expenses in the state;
- 4. the total number of Louisiana residents employed by the taxpayer and the number of those Louisiana residents directly engaged in research and development;
- 5. the average wages of the Louisiana resident employees not directly engaged in research and development and the average wages of the Louisiana resident employees directly engaged in research and development;
- 6. the average value of benefits received by all Louisiana resident employees;
- 7. the cost of health insurance coverage offered to all Louisiana resident employees;
- 8. any other information required by LED.

C. Taxpayers qualifying for tax credit transfers under §2915 may apply for up to two credit certifications per calendar year. All other taxpayers shall be limited to one credit certification per calendar year.

D. LED shall review the application and issue a credit certification in the amount determined to be eligible and provide a copy to the Department of Revenue. The credit certification and the amount of such certification shall be considered preliminary and shall be subject in all respects to audit by the Louisiana Department of Revenue.

E. In order for credits to be awarded, a taxpayer must claim the expenditures within one year after December 31 of the year in which the expenditure was incurred. For example, company A buys a piece of equipment that would qualify for the research and development tax credit on May 15, 2011. In order for company A to receive a credit on that expenditure, the application for credit on that expense must be received by December 31, 2012.

F. Each year LED shall perform a detailed examination of at least 10 percent of all applications received prior to the issuance of credits on such applications.

- 1. LED shall select applications for examination based on one or more of the following:
 - a. a random sampling;
 - b. applicant's business sector; and
 - c. other selection criteria as determined by LED.
- 2. Upon notice that their application has been selected for examination, the applicant shall provide all supporting documentation requested by LED to show the amount of qualified research expenses for such taxable year.
- 3. The applicant bears the burden of proving that its activities meet the definition of qualified research under 26 U.S.C. §41(d).

4. LED still retains the right to examine a taxpayer's application after the issuance of credits and any credits disallowed following such examination shall be subject to recovery, recapture or offset.

G. If LED reviews a submission and determines that an applicant is not eligible for tax credits for a tax year, the company shall have six months from the date of disallowance to resubmit additional documentation for reconsideration. LED will not consider any additional documentation after this six-month period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of Business Development, LR 36:1768 (August 2010), LR 38:351 (February 2012), LR 40:51 (January 2014), LR 40:1526 (August 2014), amended by the Office of the Secretary, LR 42:42 (January 2016), amended the Department of Economic Development, Office of the Secretary, LR 44:

§2911. Recapture of Credits

A. An application for credit certification shall constitute:

1. a consent by the taxpayer that credits granted under this Section, but later disallowed in whole or in part, may be recovered by the secretary of the Department of Revenue from the taxpayer applicant through any collection remedy authorized by the provisions of R.S. 47:6015(H); and

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004), amended by the Office of the Secretary, LR 38:352 (February 2012), amended by the Office of Business Development, LR 40:52 (January 2014), LR 40:1527 (August 2014), amended by the Department of Economic Development, Office of the Secretary, LR 44:

§2913. Ineligible Businesses

A. - A.1. ...

2. businesses primarily engaged in custom manufacturing or custom fabricating that do not have a pending or issued United States patent related to the qualified research expenditures claimed.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 40:52 (January 2014), amended LR 40:1527 (August 2014), amended by the Department of Economic Development, Office of the Secretary, LR 44:

§2915. Transfer of Certain Research and Development Credits

A. For tax years 2018 and later, credits based upon participation in either the Small Business Technology Transfer Program or the Small Business Innovation Research Grant not previously claimed by a taxpayer shall be transferable in accordance with the following provisions.

1. A single transfer or sale may involve one or more transferees.

2. Notice of the credit transfer shall be submitted by the applicant to the Louisiana Department of Revenue in writing within 10 business days of the transfer or sale of credits.

a. No transfer or sale of credits shall be effective until recorded in the tax credit registry.

b. The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter issued by the Department of Economic Development, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of the transfer, the amount transferred, a copy of the credit certificate, the price paid by

the transferee to the transferor, and any other information required by the Department of Revenue.

c. The notification submitted to the Department of Revenue shall include a transfer processing fee of two hundred dollars per transferee.

d. Failure to comply with this Paragraph shall result in the disallowance of the tax credit until the taxpayers are in full compliance.

3. The transfer or sale of credits does not extend the time in which the credits can be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 44:

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Small Business Analysis

The proposed Rule is not anticipated to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed Rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCF 170 of the 2014 Regular Legislative Session.

Public Comments

Interested persons may submit written comments to Robin Porter, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to the LaSalle Building, Office of the Secretary, Eleventh Floor, 617 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by fax to (225) 342-9448, or by email to Robin.Porter@la.gov. All comments must be received no later than close of business Tuesday, September 25, 2018.

Public Hearing

A public hearing to receive comments on the Notice of Intent will be held on Wednesday, September 26, 2018 at 10 am in the Griffon Conference Room at the Department of Economic Development, 617 North Third Street, Baton Rouge, LA 70802.

Anne Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Research and Development Tax Credit Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change is not anticipated to result in any additional expenditures or savings for state or local

governmental units. The LA Dept. of Economic Development (LED) intends to administer the program with existing resources and personnel. Any additional administrative expenditures that may be incurred are anticipated to be marginal and will be absorbed within LED's existing resources. The proposed rule changes revise the Research & Development tax credit program regarding credit amounts and transferability.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will increase program credit costs by \$200,000 in FY 19, and then decrease costs beginning in FY 20 with anticipated phase-up of savings totaling \$900,000 annually by FY 21. For reference, the current baseline of the program totals approximately \$4.7 M annually.

Providing transferability to the tax credits given to Small Business Innovation Research/Small Business Technology Transfer (SBIR/SBTT) firms, even with the reduced rate from 40% to 30%, likely increases program costs by \$1.8 M per year. Being applicable to tax year 2018, the additional costs are likely to be realized against state fiscal as early as FY 19. However, the credit rates and requiring smaller firms to exceed the base spending threshold for credits to apply work to reduce program credit costs by an estimated \$2.7 M. The net effect of the revisions to the credits serves to reduce the program by up to \$900,000 annually, although this net effect will be realized over time, as it will take approximately four years for firms participating in the program under its current parameters to work through the program, while new entrants with lower associated costs accumulate in the program.

Furthermore, a \$200 per transfer fee is imposed to help defray the costs of the transferable credit registry. This may generate additional SGR collections for the LA Dept. of Revenue depending upon the number of credit transfers, though revenue from this source is speculative.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The modifications to the Research & Development credit program regarding lowered credit amounts may represent a reduced economic benefit to eligible firms, as they will receive reduced credits from the state. However, eligible firms that receive a federal Small Business Innovation and Research Grant (SBIR) or Small Business Technology Transfer (SBTT) grant will now have the ability to transfer the credits issued to them under the R&D program, which represents a new economic benefit for these firms.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits.

Anne G. Villa
Undersecretary
1808#034

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Administrative Board Operations and Programs
(LAC 28:I Chapter 3, 503, 705,
715, 1303, 2103, and 2709)

The Board of Elementary and Secondary Education proposes to amend LAC 28:I in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10). Provisions governing the board are being