

1 HB600  
2 139594-1  
3 By Representative Moore (B)  
4 RFD: Financial Services  
5 First Read: 22-MAR-12

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill would create the Alabama Small  
9 Business Financing Authority within the Department  
10 of Economic and Community Affairs for the purpose  
11 of promoting the development of small businesses in  
12 the state. This bill would authorize the authority  
13 to work with participating banks and other lenders  
14 to provide small businesses that meet certain  
15 requirements additional access to capital. This  
16 bill would provide for the powers and duties of the  
17 authority.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT

22  
23 To create the Alabama Small Business Financing  
24 Authority; to provide for the board of the authority; to  
25 provide for the powers and duties of the authority; and to  
26 authorize the authority to enter into agreements with  
27 participating banks and other lenders to provide small

1 businesses with additional access to capital under certain  
2 conditions.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. (a) This act shall be known and may be  
5 cited as the Alabama Small Business Financing Act.

6 (b) As used in this act, the following terms have  
7 the following meanings:

8 (1) ADECA. The Alabama Department of Economic and  
9 Community Affairs.

10 (2) AUTHORITY. The Alabama Small Business Financing  
11 Authority created by this act.

12 (3) BUSINESS ENTERPRISE. Any a. person engaged in  
13 business activities in the state including, without  
14 limitation, manufacturing, processing, assembling, storing,  
15 warehousing, servicing, distributing, or selling of any  
16 products; b. person making sales or providing services or  
17 goods to persons described in paragraph a.; c. persons engaged  
18 in research and development, including, but not limited to,  
19 scientific laboratories; d. not-for-profit entity doing  
20 business in the state; or e. other business, industry, or  
21 enterprise that will further the purposes of this act.

22 (4) ELIGIBLE SMALL BUSINESS. Any person engaged in  
23 one or more business enterprises in the state that satisfies  
24 one or more of the following requirements: a. is a for-profit  
25 enterprise that 1. has received ten million dollars  
26 (\$10,000,000) or less in annual gross income under generally  
27 accepted accounting principles for each of its last three

1 fiscal years or lesser time period if it has been in existence  
2 less than three years; 2. has fewer than 500 employees as  
3 defined in 13 C.F.R. § 121.106; 3. has a net worth of two  
4 million dollars (\$2,000,000) or less; or 4. meets such other  
5 requirements as the authority shall determine from time to  
6 time if the authority finds and determines that person is in  
7 need of assistance of the authority; or b. is a not-for-profit  
8 entity granted tax-exempt status under 26 U.S.C.A § 501(c)(3)  
9 of the Internal Revenue Code and doing business in the state.

10 (5) FEDERAL ACT. The federal Small Business Jobs Act  
11 of 2010, Public Law 111-240, as amended from time to time.

12 (6) INTERNAL REVENUE CODE. The federal Internal  
13 Revenue Code of 1986, as amended.

14 (7) LENDER. Any federal or state-chartered bank,  
15 federal land bank, production credit association, bank for  
16 cooperatives, federal or state-chartered savings institution,  
17 small business investment company, or any other financial  
18 institution qualified within the state to originate and  
19 service loans, including, but not limited to, banks, insurance  
20 companies, credit unions, investment banking, or brokerage  
21 companies and mortgage loan companies.

22 Section 2. (a) The Legislature finds and determines  
23 all of the following:

24 (1) There exists a need to assist small businesses  
25 in the state in helping obtain financing for new business or  
26 in the expansion of existing business in order to promote and

1 develop economic development and to further the long-term  
2 economic development of the state.

3 (2) It is necessary to create a governmental body to  
4 help small businesses obtain financing by working with banks  
5 and other lenders to provide loans, guarantees, insurance, and  
6 other assistance to small businesses, thereby encouraging the  
7 investment of private capital in small businesses in this  
8 state. The creation of this governmental body to assist in  
9 these matters is essential to the economic development of the  
10 state. In making these determinations, the Legislature has  
11 considered and affirmatively expresses its policy to assist  
12 small businesses in Alabama.

13 (b) All of the foregoing are public purposes and the  
14 activities of the authority shall serve a public purpose by  
15 promoting industry, developing trade, and increasing  
16 employment opportunities for the benefit of the state.

17 (c) The Alabama Small Business Financing Authority  
18 is created, with such powers and duties as are set forth in  
19 this act. All powers, rights, and duties conferred upon the  
20 authority by this act or other provisions of law shall be  
21 exercised or implemented by the board.

22 (d) All federal funds received or receivable by  
23 ADECA as part of the U.S. Treasury's State Small Business  
24 Credit Initiative under the federal act are hereby transferred  
25 to the authority, subject to any requirements imposed by that  
26 program related to these transfers. If any provision of this  
27 act is inconsistent with the federal act on matters related to

1 federal funds received or receivable by ADECA or the  
2 authority, the provisions of the federal act shall govern and  
3 control.

4 Section 3. The board shall consist of the Director  
5 of ADECA, the Director of the Alabama Development Office, the  
6 State Treasurer, one community banker appointed by the Speaker  
7 of the House, one banker appointed by the President Pro  
8 Tempore of the Senate, and two members appointed by the  
9 Governor who shall have knowledge and experience in the  
10 management and operation of a small business sufficient to  
11 implement the purpose of this act. The board members shall  
12 elect a chair of the board. Appointments shall be for terms of  
13 four years, except that appointments to fill vacancies shall  
14 be made for the unexpired terms. No appointed members shall  
15 serve more than one term, except in the case of appointments  
16 to fill vacancies for unexpired terms. All members of the  
17 board shall be residents of the state and shall have full  
18 voting privileges. The members of the board shall receive no  
19 salary but shall be paid travel and other expenses incurred to  
20 attend meetings or while otherwise engaged in the discharge of  
21 their duties in the same manner as state employees. Four  
22 members of the board shall constitute a quorum for the  
23 transaction of all business of the authority. Board meetings  
24 shall be held at the call of the chair or whenever four  
25 members so request. The board may promulgate and amend rules  
26 as necessary to provide for the furtherance of this act.

1           Section 4. The Governor shall appoint the executive  
2 director of the authority. The executive director shall  
3 administer, manage, and direct the affairs and activities of  
4 the authority in accordance with the policies and under the  
5 control and direction of the board and the director of ADECA.  
6 Except as otherwise stated in this act, the executive director  
7 shall approve all accounts for allowable expenses for the  
8 authority or of any employee, consultant, or other person  
9 providing the services to the board, and for expenses  
10 incidental to the operation of the authority subject to  
11 approval of the director of ADECA. The executive director, as  
12 custodian, shall maintain all books, documents, and papers of  
13 the authority. The executive director may cause copies to be  
14 made of all minutes and other records and documents of the  
15 authority. The executive director shall perform such other  
16 duties as prescribed by the board in carrying out the purposes  
17 of this act. The director of ADECA shall reassign or provide  
18 other staff to the authority as needed.

19           Section 5. The authority is granted all powers  
20 necessary or appropriate to carry out and effectuate its  
21 purposes including, but not limited to, the following powers  
22 to:

23           (1) Have perpetual existence as a public body  
24 corporate and as a political subdivision of the state.

25           (2) Adopt, amend, and repeal bylaws, rules and  
26 regulations not inconsistent with this act, to regulate its

1       affairs, and to carry into effect the powers and the purposes  
2       of the authority and for the conduct of its business.

3               (3) Sue and be sued in its name.

4               (4) Have an official seal and alter it at will.

5               (5) Maintain an office at such place within the  
6       state as it may designate.

7               (6) Make and execute contracts and all other  
8       instruments necessary and convenient for the performance of  
9       its duties and the exercise of its powers under this act upon  
10      such terms and conditions it deems appropriate including  
11      documents related to guarantee indebtedness programs, loan  
12      guarantee programs, and loan participation programs as  
13      established by the authority.

14              (7) Employ office personnel, advisers, consultants,  
15      professionals, and agents as may be necessary in its judgment,  
16      and to fix their compensation.

17              (8) Procure insurance against any loss in connection  
18      with its property and other assets, including, but not limited  
19      to, loans in such amounts and from such insurers as it deems  
20      advisable.

21              (9) Procure insurance or guarantees from any public  
22      or private entities, including any department, agency, or  
23      instrumentality of the United States of America.

24              (10) Receive and accept from any source aid or  
25      contributions of money, property, labor, or other things of  
26      value to be held, used, and applied to carry out the purposes  
27      of this act, subject to any conditions upon which grants or



1 contributions are made, including, but not limited to, gifts  
2 or grants from any department, agency, or instrumentality of  
3 the United States.

4 (11) Enter into agreements with any department,  
5 agency, or instrumentality of the United States or of the  
6 state and with lenders and enter into loans with contracting  
7 parties for the purpose of planning, regulating, and providing  
8 for the financing or assisting in the financing of any  
9 eligible small business or any project thereof.

10 (12) Enter into contracts or agreements with lenders  
11 for the servicing of loans or processing of loans, or both.

12 (13) Provide technical assistance to local  
13 industrial development authorities and to profit and nonprofit  
14 entities in the development or operation by, or assistance to,  
15 persons engaged in eligible small businesses and distribute  
16 data and information concerning the encouragement and  
17 improvement of eligible small businesses in the state.

18 (14) Use any fund of the authority for any and all  
19 expenses to be paid by the authority including, but not  
20 limited to, all of the following:

21 a. Any and all expenses for administrative, legal,  
22 actuarial, and other services.

23 b. All costs, charges, fees, and expenses of the  
24 authority.

25 c. All expenses and costs relating to the  
26 guaranteeing, insuring, or procurement of guarantees,

1 insurance, or other instruments providing credit or the  
2 enhancement of credit for eligible small businesses.

3 (15) Collect fees and charges the authority  
4 determines to be reasonable in connection with its loans,  
5 insurance, guarantees, commitments, and servicing thereof.

6 (16) Create and establish such funds and accounts as  
7 may be necessary or desirable for its purposes.

8 (17) Enter into agreements to authorize lenders to  
9 undertake loan decision and processing functions and  
10 responsibilities with respect to certain authority guaranteed  
11 loans without obtaining prior authority approval. Under such  
12 agreements, the authority will provide each lender credit  
13 authority equal to an amount determined by the authority, or  
14 an amount equal to the funds available for such guarantees,  
15 whichever is less, for the period designated in an agreement  
16 between the authority and the lender. The lender's allocation  
17 of credit authority shall be increased only by written  
18 agreement of the authority and shall not be restored  
19 automatically by the receipt of payments on authority loans.

20 (18) Take any action necessary or convenient for the  
21 exercise of the powers and purposes granted by this act or  
22 reasonably implied from them.

23 Section 6. The authority may make, and undertake  
24 commitments to make, loans to and guarantees for lenders under  
25 terms and conditions requiring the proceeds thereof to be used  
26 by the lenders to make loans to eligible small businesses.  
27 Loan commitments, actual loans, or guarantees of such loans

1 may be originated through and serviced by any such lender. As  
2 a condition to a lender's participating in the loan, the  
3 lender shall agree to do both of the following: (1) Comply  
4 with requirements established by the authority including  
5 requirements that are consistent with the federal act for  
6 funds received or receivable by ADECA or the authority  
7 pursuant to the federal act or programs thereunder, and (2)  
8 use the proceeds of the loan within a reasonable period of  
9 time to make loans to eligible small businesses, or finance  
10 the projects of eligible small businesses, in the state.

11 Section 7. Prior to carrying out the powers granted  
12 herein, the authority shall adopt rules governing its  
13 activities including, but not limited to, rules relating to  
14 all of the following:

15 (1) Procedures for the submission of requests or  
16 invitations and proposals for making loans to or guarantees in  
17 favor of lenders.

18 (2) The reinvestment by a lender of the proceeds, or  
19 an equivalent amount, from any loan to a lender in loans to  
20 provide financing for eligible business in the state.

21 (3) Assurances that the lender and the eligible  
22 business to be financed will satisfy terms and conditions of  
23 the federal act.

24 (4) Rates, fees, charges, and other terms and  
25 conditions for originating or servicing loans in order to  
26 protect against realization of an excessive financial return  
27 or benefit by the originator or servicer.

1           (5) The type and amount of collateral or security to  
2 be provided to assure repayment of loans to lenders made by  
3 the authority.

4           (6) The nature and amount of fees to be charged by  
5 the authority to provide for expenses and reserves of the  
6 authority.

7           (7) Any other appropriate matters related to the  
8 duties or exercise of the authority's powers.

9           Section 8. No loans or loan guarantees made by the  
10 authority under this act shall constitute a debt, liability,  
11 or general obligation of the state or any political  
12 subdivision thereof, other than the authority, or a pledge of  
13 the faith and credit of the state or any political subdivision  
14 thereof, other than the authority, but shall be payable solely  
15 as provided by the authority. No member or officer of the  
16 board of the authority nor any person executing the loans or  
17 loan guarantees shall be liable personally on any loan or loan  
18 guarantees by reason of the issuance thereof. Each loan or  
19 loan guarantee made under this act shall contain on the face  
20 thereof a statement that neither the state, nor any other  
21 political subdivision thereof, shall be obligated to pay the  
22 same or the interest thereon or other costs incident thereto  
23 except from the revenue or money pledged by the authority and  
24 that neither the faith and credit nor the taxing power of the  
25 state or any political subdivision thereof is pledged to the  
26 payment of the principal of, or the interest on, such loan or  
27 loan guarantee.

1           Section 9. All expenses incurred by the authority in  
2 carrying out the provisions of this act shall be payable  
3 solely from funds provided under this act, and nothing in this  
4 act shall be construed to authorize the authority to incur  
5 indebtedness or liability on behalf of or payable by the state  
6 or any of its other political subdivisions.

7           Section 10. (a) There is created in the State  
8 Treasury a fund to be known as the Alabama Small Business  
9 Capital Access Fund. The fund shall be comprised of moneys  
10 allocated to the state by programs established by the federal  
11 act; all income from the investment of moneys held by the  
12 fund; and any other moneys designated for deposit to the fund  
13 from any source, public or private. Interest earned on moneys  
14 in the fund shall remain in the fund and be credited to it.  
15 Any moneys remaining in the fund, including interest thereon,  
16 at the end of each fiscal year shall not revert to the general  
17 fund but shall remain in the fund. Moneys in the fund shall be  
18 used to provide loans, loan guarantees, loan loss reserves,  
19 and interest rate write downs. The fund shall be managed by  
20 ADECA and administered by the authority.

21           (b) The fund may be used as a special reserve fund  
22 to cover potential future losses from the loan portfolios of  
23 participating banks and other lenders. The authority may  
24 establish with one or more banks and other lenders one or more  
25 accounts or pools for the fund. The authority may require  
26 matching contributions to the fund by the lenders or the  
27 borrowers, or both, pursuant to established guidelines.

1           (c) The authority, or its designated agents, shall  
2 determine the qualifications, terms, and conditions for the  
3 use of the fund and the accounts thereof. In connection with  
4 applications for claims made against the fund, the authority  
5 may require the production of any document, instrument,  
6 certificate, legal opinion, or any other information it deems  
7 necessary or convenient. All claims made against the fund  
8 shall be approved by the authority.

9           Section 11. Nothing contained in this act shall be  
10 construed as a restriction or limitation upon any powers that  
11 the authority might otherwise have under any other law of the  
12 state, and this act supersedes all other laws in conflict  
13 herewith and is cumulative to such powers. Insofar as the  
14 provisions of this act are inconsistent with the provisions of  
15 any other law, the provisions of this act shall be controlling  
16 and the powers conferred by this act shall be regarded as  
17 supplemental and additional to powers conferred by any other  
18 laws. The provisions of this act shall be liberally construed  
19 to accomplish the purposes of this act.

20           Section 12. This act shall become effective on the  
21 first day of the third month following its passage and  
22 approval by the Governor, or its otherwise becoming law.