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2
3 HOUSE WAYS AND MEANS GENERAL FUND COMMITTEE SUBSTITUTE FOR
4 HB195

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9 SYNOPSIS: This bill would create the Alabama Rural and
10 Agribusiness Jobs Act to create a procedure for the
11 certification of growth funds and would authorize
12 the Department of Commerce to issue a tax credit
13 certificate to taxpayers who make investor
14 contributions to a certified growth fund to make
15 capital accessible to rural, minority, and female
16 owned businesses.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to commerce; to establish the Alabama Rural
23 and Agribusiness Jobs Act; to establish a procedure for the
24 certification of growth funds, as defined; and to authorize
25 the issuance of tax credit certificates under certain
26 conditions.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the Alabama Rural and Agribusiness Jobs Act.

3 Section 2. As used in this act, the following words
4 shall have the following meanings:

5 (1) AFFILIATE. An entity that directly, or
6 indirectly through one or more intermediaries, controls, is
7 controlled by, or is under common control with another entity.
8 For the purposes of this subdivision, an entity is controlled
9 by another entity if the controlling person holds, directly or
10 indirectly, the majority voting or ownership interest in the
11 controlled person or has control over the day-to-day
12 operations of the controlled person by contract or by law.

13 (2) AGRIBUSINESS. A business that earns a majority
14 of its revenues from either farming, forestry, biotechnology,
15 fisheries, or biofuels and the processing, manufacturing,
16 packaging, storage, distribution, marketing, and sales of
17 those products or commodities; or the design, creation,
18 manufacture, marketing, or sales of technology, equipment, or
19 supplies related to those businesses.

20 (3) CLOSING DATE. The date on which a growth fund
21 has collected all amounts specified by subsection (f) of
22 Section 3.

23 (4) DEPARTMENT. The Department of Commerce.

24 (5) GROWTH BUSINESS. A business to which all of the
25 following apply at the time of the initial investment in the
26 company by a growth fund:

27 a. Has fewer than 200 employees.

1 b. Has its principal business operations in one or
2 more growth zones in the state.

3 c. Is any of the following:

4 1. Engaged in North American Industry Classification
5 System codes 11, 21, 22, 23, 31 through 33, 48 through 49, 54,
6 or 62 or, if not engaged in those industries, the department
7 decides that the investment will be beneficial to the growth
8 zone.

9 2. An agribusiness as defined in this section.

10 3. Is a minority or female owned business.

11 4. Is a rural hospital or health clinic.

12 (6) GROWTH FUND. An entity certified by the
13 department under subsection (e) of Section 3.

14 (7) GROWTH INVESTMENT. Any capital or equity
15 investment in a growth business or any loan to a growth
16 business with a stated maturity at least one year after the
17 date of issuance; provided that with respect to any loan to a
18 growth business secured by accounts receivable, inventory,
19 real estate, or other tangible property, the chief executive
20 officer or similar official of the growth business executes an
21 affidavit that the business sought and was denied similar
22 financing from a banking institution doing business in this
23 state.

24 (8) GROWTH ZONE. A rural county of the state with
25 less than 50,000 in population pursuant to the 2020 federal
26 decennial census.

1 (9) HIGH WAGE EMPLOYMENT POSITION. An employment
2 position that is filled, pays a wage of at least 110 percent
3 of the county average as noted in the most recent quarterly
4 County Employment and Wages report by the Bureau of Labor
5 Statistics of the United States Department of Labor, and
6 requires at least 35 hours of work per week or any other
7 period of time generally accepted by custom, industry, or
8 practice as full-time employment.

9 (10) INVESTMENT AUTHORITY. The amount stated on the
10 notice issued under subsection (e) of Section 3 certifying the
11 growth fund. At least 75 percent of a growth fund's investment
12 authority shall be comprised of investor contributions.

13 (11) INVESTOR CONTRIBUTION. An investment of cash by
14 a person with state premium tax liability in a growth fund
15 that equals the amount specified with respect to the person in
16 the department's approval of a growth fund's application
17 pursuant to subsection (e) of Section 3. The investment shall
18 purchase an equity interest in the growth fund or purchase, at
19 par value or premium, a debt instrument that has a maturity
20 date at least five years from the closing date and a repayment
21 schedule that is no faster than level principal amortization
22 over five years.

23 (12) JOBS RETAINED. The number of high wage
24 employment positions that existed before the initial growth
25 investment and for which the growth business's chief executive
26 officer or similar officer certifies that the high wage
27 employment position would have been eliminated but for the

1 initial growth investment. The retained jobs of a growth
2 business shall be calculated each year based on the monthly
3 average of high wage employment positions. The reported number
4 of retained jobs may not exceed the number reported on the
5 initial report required under Section 7.

6 (13) MINORITY OR FEMALE OWNED BUSINESS. A business
7 that is more than 50 percent owned by one or more females or
8 individuals of African-American, Asian, or Hispanic origin.

9 (14) NEW ANNUAL JOBS. Except as provided in
10 paragraph c., the term means the difference between paragraphs
11 a. and b.

12 a.1. The monthly average of high wage employment
13 positions for the preceding calendar year; or

14 2. If the preceding calendar year contains the
15 initial growth investment, the monthly average of high wage
16 employment positions for the months including and after the
17 initial growth investment and before the end of the preceding
18 calendar year.

19 b. The number of high wage employment positions at
20 the growth business on the date of the initial growth
21 investment.

22 c. If the amount calculated in subparagraph 1 of
23 paragraph a. is less than zero, the new annual jobs amount is
24 equal to zero.

25 (15) PRINCIPAL BUSINESS OPERATIONS. The place or
26 places where at least 60 percent of the business's employees
27 work or where employees that are paid at least 60 percent of

1 the business's payroll work. A business that has agreed to
2 relocate or hire new employees using the proceeds of a growth
3 investment to establish its principal business operations in a
4 growth zone in the state shall be deemed to have its principal
5 business operations in this new location, provided the
6 business satisfies this requirement within 180 days after
7 receiving the growth investment, unless the department agrees
8 to a later date.

9 (16) STATE PREMIUM TAX LIABILITY. Any liability
10 incurred by any entity under Section 27-4A-3 and Section
11 27-3-29, Code of Alabama 1975.

12 Section 3. (a) Beginning January 1, 2021, the
13 department shall accept applications for approval as a growth
14 fund on a form prescribed by the department. The application
15 shall include all of the following:

16 (1) The total investment authority sought by the
17 applicant.

18 (2) Evidence that the applicant or an affiliate of
19 the applicant is licensed as a rural business investment
20 company under 7 U.S.C. § 2009cc or as a small business
21 investment company under 15 U.S.C. § 681, including a
22 certificate executed by an executive officer of the applicant
23 attesting that the license remains in effect and has not been
24 revoked; and at least one principal in a rural business
25 investment company or a small business investment company is,
26 and has been for at least four years, an officer or employee

1 of the applicant or an affiliate of the applicant on the date
2 the application is submitted.

3 (3) Evidence that as of the date the application is
4 submitted, the applicant or affiliates of the applicant have
5 invested at least one hundred million dollars (\$100,000,000)
6 in non-public companies located in non-metropolitan counties,
7 as defined by the Office of Management and Budget within the
8 Office of the President of the United States, on the basis of
9 county or county-equivalent units.

10 (4) An estimate of the number of aggregate new
11 annual jobs that will be created and jobs retained in this
12 state because of the applicant's growth investments.

13 (5) A business plan that includes a revenue impact
14 assessment projecting state and local tax revenue, as well as
15 reduced state expenditures, to be generated by the applicant's
16 proposed growth investments prepared by a nationally
17 recognized third-party independent economic forecasting firm
18 using a dynamic economic forecasting model that analyzes the
19 applicant's business plan over the 10 years following the date
20 the application is submitted to the department.

21 (6) A signed affidavit from each investor stating
22 the amount of investor contributions each taxpayer commits to
23 make.

24 (7) A non-refundable application fee of twenty
25 thousand dollars (\$20,000) payable to the department.

26 (b) Within 30 days after receipt of a completed
27 application containing the information set forth in subsection

1 (a), the department shall grant or deny the application. The
2 department shall deem applications received on the same day to
3 have been received simultaneously. The department shall
4 approve investment authority up to an amount that would allow
5 not more than five million dollars (\$5,000,000) in tax credits
6 to be taken in any one year, including any credits that are
7 carried forward under subsection (c) of Section 4. If requests
8 for investment authority exceed this limitation, the
9 department shall proportionally reduce the investment
10 authority and the investor contributions for each approved
11 application as necessary to avoid exceeding the limit.

12 (c) The department shall deny an application if any
13 of the following are true:

14 (1) The application is incomplete.

15 (2) The applicant does not satisfy all the criteria
16 described in subdivisions (2) and (3) of subsection (a).

17 (3) The revenue impact assessment submitted under
18 subdivision (5) of subsection (a) does not demonstrate that
19 the applicant's business plan will result in a positive
20 economic impact on this state over a 10-year period that
21 exceeds the cumulative amount of tax credits that would be
22 issued to the applicant's investors.

23 (4) The investor contributions described in
24 affidavits submitted under subdivision (6) of subsection (a)
25 do not equal at least 75 percent of the total amount of
26 investment authority sought under the applicant's business
27 plan.

1 (5) The department has already approved the maximum
2 amount of investment authority and investor contributions
3 allowed under subsection (b).

4 (d) If the department denies an application, the
5 applicant may provide additional information to the department
6 to complete, clarify, or cure defects in the application
7 identified by the department, except for failure to comply
8 with subdivision (4) of subsection (c), within 15 days of the
9 notice of denial for reconsideration and determination. The
10 department shall review and reconsider the applications for
11 which additional information is provided within the 15-day
12 period within 30 days and, if approved, the application shall
13 be considered complete as of its original submission date.

14 (e) The department may not reduce the requested
15 investment authority or deny a growth fund application for
16 reasons other than those described in subsections (b) and (c).
17 Upon approval of an application, the department shall certify
18 the applicant as a growth fund, specifying the amount of the
19 applicant's investment authority, the investor contributions
20 required from each taxpayer that submitted an affidavit with
21 the growth fund's application, and the number of new annual
22 jobs and jobs retained that will be required of the growth
23 fund, which shall match those projected in the growth fund's
24 application, prorated on the basis of the investment authority
25 awarded to the growth fund.

26 (f) (1) Within 60 days of receiving the approval
27 issued under subsection (e), a growth fund shall collect all

1 investor contributions and collect additional investments of
2 cash that, when added to the investor contributions, at least
3 equal the growth fund's investment authority. Within 65 days
4 of receiving the approval issued under subsection (e), a
5 growth fund shall send to the department documentation
6 sufficient to prove that the amounts described in this
7 subsection have been collected. At least 10 percent of the
8 growth fund's investment authority must consist of equity
9 investments contributed directly or indirectly by affiliates
10 of the growth fund.

11 (2) Upon receipt of the documentation required by
12 subdivision (1), the department shall provide a tax credit
13 certificate to each taxpayer that made an investor
14 contribution in the amount of the taxpayer's investor
15 contribution.

16 (g) If the growth fund fails to fully comply with
17 subsection (f), the growth fund's certification shall lapse
18 and the corresponding investment authority and investor
19 contributions will not count toward the limits on the program
20 size prescribed by subsection (b). The department shall first
21 award lapsed investment authority on a pro rata basis to each
22 growth fund that was awarded less than the investment
23 authority for which it applied. A growth fund may allocate the
24 associated investor contribution authority to any taxpayer
25 with state premium tax liability. Any remaining investment
26 authority may be awarded by the department to new applicants.

1 Section 4. (a) For tax years beginning on or after
2 January 1, 2022, any taxpayer that makes an investor
3 contribution is vested with an earned credit against state
4 premium tax liability equal to the investor contribution.
5 Twenty percent of the earned credit, including the amounts
6 carried forward pursuant to subsection (c), may be used
7 annually beginning in the taxable year containing the third
8 anniversary of the closing date. A taxpayer claiming a credit
9 against any premium tax liability is not required to pay any
10 additional retaliatory tax under Section 27-3-29, Code of
11 Alabama 1975, as a result of claiming that credit.

12 (b) The credit is non-refundable and may not be
13 sold, transferred, or allocated to any other entity other than
14 an affiliate that was an affiliate at the time of the
15 submission of the investor's affidavit included in the growth
16 fund's application.

17 (c) The amount of the credit claimed by a taxpayer
18 shall not exceed the amount of the taxpayer's state premium
19 tax liability for the tax year for which the credit is
20 claimed. Any amount of tax credit that the entity does not
21 claim in a taxable year may be carried forward for use in
22 future taxable years for a period not to exceed five years.

23 (d) A taxpayer claiming a credit under this section
24 shall submit a copy of the tax credit certificate with the
25 taxpayer's return for each taxable year for which the credit
26 is claimed.

1 Section 5. (a) The department shall revoke the tax
2 credit certificate issued under subdivision (2) of subsection
3 (f) of Section 3 if any of the following occur with respect to
4 a growth fund before the growth fund exits the program in
5 accordance with subsection (e):

6 (1) Within two years of the closing date, the growth
7 fund does not invest 100 percent of its investment authority
8 in growth investments in this state, of which at least 25
9 percent shall be in agribusiness and at least 25 percent shall
10 be in minority or female owned businesses, and at least 75
11 percent of its total investment authority invested in growth
12 businesses located in rural areas, and maintain that level of
13 investment until the sixth anniversary of the closing date.

14 (2) The growth fund, after satisfying subdivision
15 (1), fails to maintain growth investments equal to 100 percent
16 of its investment authority until the sixth anniversary of the
17 closing date. For the purposes of this subdivision, an
18 investment is maintained even if it is sold or repaid so long
19 as the growth fund reinvests an amount equal to the capital
20 returned or recovered from the original investment, exclusive
21 of any profits realized, in other growth investments in this
22 state within 12 months of the receipt of the capital. Amounts
23 received periodically by a growth fund shall be treated as
24 continuously invested in growth investments if the amounts are
25 reinvested in one or more growth investments by the end of the
26 following calendar year.

1 (3) The growth fund, before exiting the program in
2 accordance with subsection (e), makes a distribution or
3 payment that results in the growth fund having less than 100
4 percent of its investment authority invested in growth
5 investments in this state or available for investment in
6 growth investments and held in cash and other marketable
7 securities.

8 (4) The growth fund makes a growth investment in a
9 growth business that directly or indirectly through an
10 affiliate owns, has the right to acquire an ownership interest
11 in, makes a loan to, or makes an investment in the growth
12 fund, an affiliate of the growth fund, or an investor in the
13 growth fund. This subdivision does not apply to investments in
14 publicly traded securities by a growth business or an owner or
15 affiliate of the growth business. For purposes of this
16 subdivision, a growth fund will not be considered an affiliate
17 of a growth business solely because of its growth investment.

18 (b) The maximum amount of growth investments in a
19 growth business, including amounts invested in affiliates of
20 the growth business, that a growth fund may count towards its
21 satisfaction of the requirements of subdivisions (1) and (2)
22 of subsection (a) is the greater of five million dollars
23 (\$5,000,000) or 20 percent of its investment authority,
24 exclusive of repaid or redeemed growth investments.

25 (c) Before revoking tax credit certificates under
26 this section, the department shall notify the growth fund of
27 the reasons for the pending revocation. The growth fund shall

1 have 90 days from the date the notice was received to correct
2 any violation outlined in the notice to the satisfaction of
3 the department and avoid revocation of the tax credit
4 certificate.

5 (d) If tax credit certificates are revoked under
6 this section, the associated investment authority and investor
7 contributions shall not count toward the limit on total
8 investment authority and investor contributions described by
9 subsection (b) of Section 3. The department shall first award
10 reverted investment authority on a pro rata basis to each
11 growth fund that was awarded less than the requested
12 investment authority for which it applied, and the growth fund
13 may allocate the associated investor contribution authority to
14 any taxpayer with state premium tax liability. The department
15 may award any remaining investment authority to new
16 applicants.

17 (e) (1) On or after the seventh anniversary of the
18 closing date, a growth fund may apply to the department to
19 exit the program and no longer be subject to regulation except
20 as set forth in subdivision (2). The department shall respond
21 to the application within 30 days of receipt. In evaluating
22 the application, the fact that no tax credit certificates have
23 been revoked and that the growth fund has not received a
24 notice of revocation that has not been cured under subsection
25 (c) shall be sufficient evidence to prove that the growth fund
26 is eligible for exit. The department may not unreasonably deny
27 an application submitted under this subsection. If the

1 application is denied, the notice shall include the reasons
2 for the determination. On or after an exit under this
3 subsection, the state shall receive a 10 percent share of any
4 distributions other than eligible distributions by the growth
5 fund that made a growth investment, other than the amount
6 necessary for a growth fund to repay principal and interest on
7 its indebtedness.

8 (2) A growth fund may not make distributions or pay
9 any fees to its equity holders even after its exit from the
10 program in accordance with subdivision (1) unless and until it
11 has made cumulative growth investments equal to at least 150
12 percent of its investment authority, with at least 25 percent
13 of its cumulative growth investments in agribusiness and at
14 least 25 percent of its cumulative growth investments in
15 minority or female owned businesses in the state and at least
16 75 percent of its cumulative growth investments in growth
17 businesses located in rural areas of the state. If applicable,
18 a growth fund shall continue to report the amount of growth
19 investments made to the department annually until it has made
20 growth investments equal to at least 150 percent of its
21 investment authority.

22 (3) At any time the growth fund proposes to make a
23 distribution to its equity holders, the growth fund shall
24 remit to the department, if applicable, a payment equal to the
25 product of the proposed distribution and a fraction, the
26 numerator of which is the number of new annual jobs and jobs
27 retained set forth in the growth fund's certification provided

1 pursuant to subsection (e) of Section 3 less the aggregate
2 number of new annual jobs and jobs retained reported to the
3 department under subsection (a) of Section 7 and the
4 denominator of which is the number of new annual jobs and jobs
5 retained set forth in the growth fund's certification provided
6 pursuant to subsection (e) of Section 3. No payment shall be
7 due if the aggregate number of new annual jobs and jobs
8 retained as of the date of the proposed distribution equal or
9 exceed the number of new annual jobs and jobs retained
10 required set forth in the growth fund's certification provided
11 pursuant to subsection (e) of Section 3.

12 (f) The department may not revoke a tax credit
13 certificate after the growth fund's exit from the program.

14 Section 6. A growth fund, before making a growth
15 investment, may request from the department a written opinion
16 as to whether the business in which it proposes to invest
17 satisfies the definition of a growth business. The department,
18 not later than 15 business days after the date of receipt of
19 the request, shall notify the growth fund of its
20 determination. If the department fails to notify the growth
21 fund of its determination within 15 business days, the
22 business in which the growth fund proposes to invest shall be
23 considered a growth business. Each request for a written
24 opinion shall be accompanied by a five hundred dollar (\$500)
25 opinion fee payable to the department.

26 Section 7. (a) Each growth fund shall submit a
27 report to the department on or before the fifth business day

1 after each anniversary of the closing date prior to its exit
2 from the program in accordance with subsection (e) of Section
3 5. The report shall provide documentation, as to each growth
4 investment made by the growth fund and include all of the
5 following:

6 (1) A bank statement evidencing each growth
7 investment.

8 (2) The name, location, and industry of each growth
9 business receiving a growth investment, including either the
10 written opinion set forth in Section 6 or evidence that the
11 business qualified as a growth business at the time the
12 investment was made.

13 (3) The number of high wage employment positions at
14 each growth business on the date of the growth fund's initial
15 growth investment.

16 (4) The number of new annual jobs and jobs retained
17 at each growth business.

18 (5) The average annual salary of the positions
19 described in subdivisions (3) and (4).

20 (6) The cumulative amount of growth investments made
21 in growth businesses.

22 (7) Financial statements for the preceding calendar
23 year audited by an independent certified public accounting
24 firm, which shall include an opinion of, or an agreed upon
25 procedures letter issued by, the independent certified public
26 accounting firm as to the growth fund's compliance with the
27 requirements of this act.

1 (8) Any other information required by the
2 department.

3 (9) A five thousand dollar (\$5,000) annual fee.

4 (b) The growth fund shall use best efforts to obtain
5 and provide information with respect to growth investments
6 that have been redeemed or repaid as part of the annual report
7 set forth in subsection (a) and shall provide the information
8 if available.

9 Section 8. The department shall report to the
10 Legislature beginning in 2023 pursuant to the provisions of
11 Section 40-1-50 and rules adopted by the Department of Revenue
12 providing an assessment of the incentives allowed in this act.

13 Section 9. (a) The department may adopt rules to
14 implement and administer this act.

15 (b) The department shall issue all forms and notices
16 required by this act in accordance with the requirements of
17 this act.

18 Section 10. The department shall notify the
19 Department of Insurance of the name of any insurance company
20 allocated tax credits under this act and the amount of the
21 credits.

22 Section 11. This act shall only apply to tax years
23 beginning on or after January 1, 2022.

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