

2
3 HOUSE WAYS AND MEANS GENERAL FUND SUBSTITUTE TO HB473
4
5
6
7

8 SYNOPSIS: This bill would create the Alabama Rural,
9 Agribusiness, and Opportunity Zone Jobs Act to
10 create a procedure for the certification of growth
11 funds.
12

13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to commerce; to establish the Alabama
18 Rural, Agribusiness, and Opportunity Zone Jobs Act; and to
19 establish a procedure for the certification of growth funds.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. This act shall be known and may be cited
22 as the Alabama Rural, Agribusiness, and Opportunity Zone Jobs
23 Act.

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

26 (1) AFFILIATE. An entity that directly, or
27 indirectly through one or more intermediaries, controls, is

1 controlled by, or is under common control with another entity.
2 For the purposes of this subdivision, an entity is controlled
3 by another entity if the controlling person holds, directly or
4 indirectly, the majority voting or ownership interest in the
5 controlled person or has control over the day-to-day
6 operations of the controlled person by contract or by law.

7 (2) AGRIBUSINESS. A business that earns a majority
8 of its revenues from either farming, forestry, biotechnology,
9 fisheries, or biofuels and the processing, manufacturing,
10 packaging, storage, distribution, marketing, and sales of
11 those products or commodities, or the design, creation,
12 manufacture, marketing, or sales of technology, equipment, or
13 supplies related to those businesses.

14 (3) CLOSING DATE. The date the department and the
15 growth fund execute the SSBCI loan closes.

16 (4) DEPARTMENT. A department designated by the
17 Office of the Governor.

18 (5) FOLLOW-ON CAPITAL. The sum of 50 percent of each
19 initial growth investment, subsequent growth investments made
20 to satisfy subdivision (a) (2) of Section 5 and any additional
21 financing received by a growth business on or after the date
22 of the initial growth investment, including senior debt,
23 subordinate debt, mortgage debt, equipment financing,
24 mezzanine debt, convertible notes, revolving lines of credit,
25 letters of credit, capital leases, preferred equity,
26 participating preferred equity, convertible preferred equity,

1 common equity, warrants and simple agreements for future
2 equity and any other financing approved by the department.

3 (6) FOLLOW-ON CAPITAL PERCENTAGE. Fifty percent
4 multiplied by a fraction, the numerator of which is the
5 aggregate follow-on capital reported to the department in
6 reports submitted pursuant to subsection (b) of Section 6 and
7 the denominator of which is 10 times the amount of the SSBCI
8 loan. The percentage may exceed 50 percent.

9 (7) GROWTH BUSINESS. A business to which all of the
10 following apply at the time of the initial investment in the
11 company by a growth fund:

12 a. Has fewer than 200 employees.

13 b. Has its principal business operations in one or
14 more growth zones in the state.

15 c. Is made in any of the following:

16 1. Any business in North American Industry
17 Classification System codes 11, 21, 22, 23, 31 through 33, 48
18 through 49, 54, or 62 or, if not engaged in those industries,
19 the department decides that the investment will be beneficial
20 to the growth zone.

21 2. An agribusiness.

22 3. A minority owned business.

23 (8) GROWTH FUND. An entity certified by the
24 department under subsection (g) of Section 3.

25 (9) GROWTH INVESTMENT. Any capital or equity
26 investment in a growth business or any loan to a growth
27 business with a stated maturity at least one year after the

1 date of issuance, provided that with respect to any loan to a
2 growth business secured by accounts receivable, inventory,
3 real estate, or other tangible property, the chief executive
4 officer or similar official of the growth business executes an
5 affidavit that the business sought and was denied similar
6 financing from a banking institution doing business in this
7 state. Fifty percent of a growth investment shall be comprised
8 of a draw on the SSBCI loan with the remaining 50 percent
9 funded with the growth fund's matching capital.

10 (10) GROWTH ZONE. A rural county of the state with
11 less than 50,000 in population pursuant to the 2020 Federal
12 Decennial Census, or a qualified opportunity zone as
13 designated pursuant to 26 U.S.C. § 1400Z-2.

14 (11) HIGH WAGE EMPLOYMENT POSITION. An employment
15 position that is filled, pays a wage of at least 110 percent
16 of the county average as noted in the most recent quarterly
17 County Employment and Wages report by the Bureau of Labor
18 Statistics of the United States Department of Labor, and
19 requires at least 35 hours of work per week or any other
20 period of time generally accepted by custom, industry, or
21 practice as full-time employment.

22 (12) INVESTMENT AUTHORITY. The amount stated on the
23 notice issued under subsection (g) of Section 3 certifying the
24 growth fund.

25 (13) JOBS RETAINED. The number of high wage
26 employment positions that existed before the initial growth
27 investment and for which the growth business's chief executive

1 officer or similar officer certifies that the high wage
2 employment position would have been eliminated but for the
3 initial growth investment. The retained jobs of a growth
4 business shall be calculated each year based on the monthly
5 average of high wage employment positions. The reported number
6 of retained jobs may not exceed the number reported on the
7 initial report required under subsection (a) of Section 6.

8 (14) MANAGEMENT FEE. An amount equal to three
9 percent per annum of the growth fund's investment authority
10 that accrues annually, but shall not be paid until the growth
11 fund exits the program in accordance with subsection (e) of
12 Section 5.

13 (15) MATCHING CAPITAL. An amount of capital raised
14 by the growth fund as debt or equity and invested in growth
15 businesses. Matching capital shall only be considered debt of
16 the growth fund and eligible for repayment pursuant to
17 subdivision (e)(2)a. of Section 5 if the growth fund provides
18 evidence of such direct or indirect debt to the department.

19 (16) MINORITY OWNED BUSINESS. A business that is
20 more than 50 percent owned by one or more individuals of
21 African-American, Asian, or Hispanic origin.

22 (17) NEW ANNUAL JOBS. Except as provided in
23 paragraph c., the term means the difference between paragraphs
24 a. and b.

25 a.1. The monthly average of high wage employment
26 positions for the preceding calendar year.

1 2. If the preceding calendar year contains the
2 initial growth investment, the monthly average of high wage
3 employment positions for the months including and after the
4 initial growth investment and before the end of the preceding
5 calendar year.

6 b. The number of high wage employment positions at
7 the growth business on the date of the initial growth
8 investment.

9 c. If the amount calculated in subparagraph a.1. is
10 less than zero, the new annual jobs amount is equal to zero.

11 (18) NEW ANNUAL JOBS AND JOBS RETAINED PERCENTAGE.
12 Fifty percent multiplied by a fraction, the numerator of which
13 is the number of new annual jobs and jobs retained reported in
14 annual reports submitted to the department pursuant to
15 subsection (b) of Section 6 and the denominator of which is
16 the number of new annual jobs and jobs retained set forth in
17 the growth fund's certification provided pursuant to
18 subsection (g) of Section 3. The percentage may exceed 50
19 percent.

20 (19) PRINCIPAL BUSINESS OPERATIONS. The place or
21 places where at least 60 percent of the business's employees
22 work or where employees that are paid at least 60 percent of
23 the business's payroll work. A business that has agreed to
24 relocate or hire new employees using the proceeds of a growth
25 investment to establish its principal business operations in a
26 growth zone in the state shall be deemed to have its principal
27 business operations in this new location, provided the

1 business satisfies this requirement within 180 days after
2 receiving the growth investment, unless the department agrees
3 to a later date.

4 (20) PROGRAM EXIT. The process described in
5 subsection (e) of Section 5.

6 (21) SSBCI FUND. The SSBCI Alabama Rural,
7 Agribusiness, and Opportunity Zone Jobs Act Account which is
8 hereby established.

9 (22) SSBCI FUNDING. An amount equal to twenty-five
10 million dollars (\$25,000,000) of the State of Alabama's
11 allocation of funds pursuant to Subtitle C of Title III of the
12 American Rescue Plan Act of 2021 which shall be deposited in
13 the SSBCI fund.

14 (23) SSBCI LOAN. A loan made by this state to a
15 growth fund using SSBCI funding. The department and the growth
16 fund shall execute a loan agreement which shall provide for:

17 a. An interest rate of one percent interest
18 compounding annually which shall be due upon program exit or
19 acceleration pursuant to Section 5.

20 b. Forgiveness at exit of a percentage of principal
21 and interest due on the SSBCI loan equal to the sum of the
22 follow-capital percentage and the new annual and jobs retained
23 percentage, provided forgiveness shall not be available with
24 respect to SSBCI loans accelerated pursuant to Section 5.

25 c. Subordination to matching capital funded directly
26 or indirectly as debt.

1 d. Draws in connection with growth investments in
2 accordance with subsection (c) of Section 4.

3 Section 3. (a) Upon receipt of an allocation of
4 funds pursuant to Subtitle C of Title III of the American
5 Rescue Plan Act of 2021, the department shall cause the SSBCI
6 funding to be deposited in the SSBCI fund.

7 (b) Within 30 days of this state's receipt of an
8 allocation of funds pursuant to Subtitle C of Title III of the
9 American Rescue Plan Act of 2021, the department shall accept
10 applications for certification as a growth fund on a form
11 prescribed by the department. The application shall include
12 all of the following:

13 (1) The total investment authority and SSBCI loan
14 sought by the applicant not to exceed fifteen million dollars
15 (\$15,000,000) and seven million five hundred thousand dollars
16 (\$7,500,000), respectively.

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

1 (3) Evidence that as of the date the application is
2 submitted, the applicant or affiliates of the applicant have
3 invested at least one hundred million dollars (\$100,000,000)
4 in nonpublic companies located in nonmetropolitan counties, as
5 defined by the Office of Management and Budget within the
6 Office of the President of the United States, on the basis of
7 county or county-equivalent units and at least twenty-five
8 million dollars (\$25,000,000) in minority owned businesses.

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

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

20 (6) A letter of credit issued to the applicant from
21 a depository institution equal to at least 50 percent of the
22 amount of investment authority requested or similar evidence
23 that the applicant has secured matching capital equal to such
24 amount.

25 (7) A nonrefundable application fee of twenty
26 thousand dollars (\$20,000) payable to the department.

1 (c) Within 30 days after receipt of a completed
2 application containing the information set forth in subsection
3 (b), the department shall grant or deny the application. The
4 department shall deem applications received on the same day to
5 have been received simultaneously. The department shall
6 approve investment authority up to an amount that would allow
7 not more than fifty million dollars (\$50,000,000) of
8 investment authority and twenty-five million dollars
9 (\$25,000,000) of SSBCI loans. If requests for investment
10 authority and SSBCI loans exceed this limitation, the
11 department shall proportionally reduce the investment
12 authority and SSBCI loan for each approved application as
13 necessary to avoid exceeding the limit.

14 (d) The department shall deny an application if any
15 of the following are true:

16 (1) The application is incomplete.

17 (2) The applicant does not satisfy all the criteria
18 described in subdivisions (2), (3), and (7) of subsection (b).

19 (3) The revenue impact assessment submitted under
20 subdivision (b) (6) does not demonstrate that the applicant's
21 business plan will result in an economic impact on this state
22 over a 10-year period that exceeds the growth fund's SSBCI
23 loan.

24 (4) The department has already approved the maximum
25 amount of investment authority and SSBCI loans allowed under
26 subsection (c).

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

11 (f) The department may not reduce the requested
12 investment authority or deny a growth fund application for
13 reasons other than those described in subsections (c) and (d).

14 (g) Upon approval of an application, the department
15 shall certify the applicant as a growth fund, specifying the
16 amount of the applicant's investment authority, SSBCI loan,
17 aggregate required matching capital, and the number of new
18 annual jobs and jobs retained that will be required of the
19 growth fund, which shall match those projected in the growth
20 fund's application, prorated on the basis of the investment
21 authority awarded to the growth fund.

22 (h) An approved growth fund may apply for additional
23 investment authority and SSBCI loans once it has invested 100
24 percent of its outstanding investment authority.

25 Section 4. (a) Within 30 days of certification of a
26 growth fund, the department shall enter into the SSBCI loan
27 with the growth fund and segregate for draws by the growth

1 fund in the SSBCI fund an amount of SSBCI funding equal to the
2 SSBCI loan awarded to such growth fund.

3 (b) A growth fund, before making a growth
4 investment, shall request from the department a written
5 opinion as to whether the business in which it proposes to
6 invest satisfies the definition of a growth business. The
7 department, not later than 15 business days after the date of
8 receipt of the request, shall notify the growth fund of its
9 determination. If the department fails to notify the growth
10 fund of its determination within 15 business days, the
11 business in which the growth fund proposes to invest shall be
12 considered a growth business. Each request for a written
13 opinion shall be accompanied by a five hundred dollar (\$500)
14 opinion fee payable to the department.

15 (c) At least five business days prior to a growth
16 investment, a growth fund shall make a draw request on the
17 SSBCI loan to the department. The draw on the SSBCI loan shall
18 not exceed 50 percent of the proposed growth investment. At
19 least two business days prior to a growth investment, a growth
20 fund shall notify the department of the date of the closing of
21 the growth investment and the department shall transfer the
22 amount of draw requested from the SSBCI fund to an account
23 designated by the growth fund on the following day. The growth
24 fund shall return the proceeds of the draw if the growth
25 investment is not made within the three business days of
26 receipt of the draw unless the return is waived by the
27 department.

1 Section 5. (a) A growth fund shall forfeit its
2 Management Fee and the SSBCI loan shall be immediately due and
3 remaining draws on the SSBCI loan forfeited if:

4 (1) Within 12 months of the closing date:

5 a. The growth fund does not invest 100 percent of
6 its investment authority in growth investments in this state,
7 of which at least 25 percent shall be invested in agribusiness
8 and at least 25 percent shall be invested in minority owned
9 businesses, and of which at least 50 percent shall be invested
10 in growth businesses located in rural areas and at least 25
11 percent shall be invested in growth businesses located in
12 Qualified Opportunity Zones.

13 b. With respect to awards of investment authority
14 less than seven million five hundred thousand dollars
15 (\$7,500,000), the growth fund does not invest 100 percent of
16 its investment authority in this state, of which at least 50
17 percent of growth investments shall be made in agribusiness or
18 minority owned businesses and at least 75 percent of growth
19 investments shall be made in rural areas or opportunity zones.

20 (2) The growth fund, after satisfying subdivision
21 (1), fails to maintain growth investments equal to 100 percent
22 of its investment authority until the sixth anniversary of the
23 closing date in accordance with the levels set forth in
24 subdivision (1). For the purposes of this subdivision, a
25 growth investment is maintained even if it is sold or repaid
26 so long as the growth fund reinvests an amount equal to the
27 capital returned or recovered from the original investment,

1 exclusive of any profits realized, in other growth investments
2 in this state within 12 months of the receipt of the capital.
3 Amounts received periodically by a growth fund shall be
4 treated as continuously invested in growth investments if the
5 amounts are reinvested in one or more growth investments by
6 the end of the following calendar year.

7 (3) The growth fund, before program exit, makes a
8 distribution or payment that results in the growth fund having
9 less than 100 percent of its investment authority invested in
10 growth investments in this state or available for investment
11 in growth investments and held in cash and other marketable
12 securities.

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

23 (b) The maximum amount of growth investments in a
24 growth business including amounts invested in affiliates of
25 the growth business, that may be counted towards its
26 satisfaction of the requirements of subdivisions (a)(1) and
27 (2) is the greater of three million dollars (\$3,000,000) or 20

1 percent of its total investment authority, exclusive of repaid
2 or redeemed growth investments.

3 (c) Upon violation of this section, the department
4 shall notify the growth fund. The growth fund shall have 90
5 days from the date the notice was received to correct any
6 violation outlined in the notice to the satisfaction of the
7 department and to avoid the penalties set forth in subsection
8 (a).

9 (d) If an SSBCI loan is accelerated, the remaining
10 draws on the SSBCI loan and associated investment authority
11 shall not count toward the limit on the SSBCI loans and total
12 investment authority described by subsection (c) of Section 3.
13 The department shall first award reverted investment authority
14 and SSBCI loans pro rata basis to each growth fund that was
15 awarded less than the amount requested in an application. The
16 department may award any remaining investment authority and
17 SSBCI loans to new applicants.

18 (e) (1) On or after the seventh anniversary of the
19 closing date, a growth fund may apply to the department to
20 exit the program and no longer be subject to regulation except
21 as set forth in subdivision (2). The application shall include
22 a calculation of the follow-on percentage and the new jobs and
23 retained jobs percentage. The department shall respond to the
24 application within 30 days of receipt. In evaluating the
25 application, the fact that the SSBCI loan has not been
26 violated and that the growth fund has not received a notice of
27 revocation that has not been cured under subsection (c) shall

1 be sufficient evidence to prove that the growth fund is
2 eligible for exit. The department may not unreasonably deny an
3 application submitted under this subsection. If the
4 application is denied, the notice shall include the reasons
5 for the determination.

6 (2) On or after an exit under this subsection, the
7 growth fund may make distributions and payments as follows:

8 a. First, to pay principal and interest on matching
9 capital funded directly or indirectly as debt.

10 b. Second, to pay management fees unless prohibited
11 under Section 5.

12 c. Third, to pay principal and interest on the SSBCI
13 loan, if applicable.

14 d. Fourth, to make distributions to its equity
15 holders.

16 Section 6. (a) Each growth fund shall submit a
17 report to the department on or before the fifth business day
18 after the first anniversary of the closing date prior to
19 program exit and include all of the following:

20 (1) A bank statement evidencing each growth
21 investment.

22 (2) The name, location, and industry of each growth
23 business receiving a growth investment, including the written
24 opinion if provided by the department pursuant to subsection
25 (b) of Section 4.

26 (3) The number of high wage employment positions at
27 each growth business on the date of the growth fund's initial

1 growth investment as evidenced on a payroll report certified
2 by the growth business.

3 (b) Thereafter, if not previously provided pursuant
4 to subsection (a), each growth fund shall submit a report to
5 the department on or before April 15 of each year prior to
6 program exit and include all of the following unless
7 previously provided:

8 (1) A bank statement evidencing each growth
9 investment.

10 (2) The name, location, and industry of each growth
11 business receiving a growth investment, including the written
12 opinion if provided by the department pursuant to subsection
13 (b) of Section 4.

14 (3) The number of high wage employment positions at
15 each growth business on the date of the growth fund's initial
16 growth investment as evidenced on a payroll report certified
17 by the growth business.

18 (4) The number of new annual jobs and jobs retained
19 at each growth business as of December 31 of the prior
20 calendar year as evidenced on a payroll report certified by
21 the growth business.

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

24 (6) The cumulative amount of growth investments made
25 in growth businesses.

26 (7) Financial statements for the preceding calendar
27 year audited by an independent certified public accounting

1 firm, which shall include an opinion of, or an agreed upon
2 procedures letter issued by, the independent certified public
3 accounting firm as to the growth fund's compliance with the
4 requirements of this act.

5 (8) The amount of follow-on capital attracted by the
6 growth business as certified by the growth business.

7 (9) Any other information required by the
8 department.

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

10 (c) The growth fund shall use best efforts to obtain
11 and provide information with respect to growth investments
12 that have been redeemed or repaid as part of the annual report
13 set forth in subsection (b) and shall provide the information
14 if available.

15 Section 7. The department shall report to the
16 Legislature beginning in 2023, pursuant to the provisions of
17 Section 40-1-50, Code of Alabama 1975, and rules adopted by
18 the Department of Revenue, providing an assessment of the
19 incentives allowed in this.

20 Section 8. (a) The department may adopt rules to
21 implement and administer this act.

22 (b) The department shall issue all forms and notices
23 required by this act in accordance with the requirements of
24 this act.

25 Section 9. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

