

1 HB473
2 213148-3
3 By Representative Garrett
4 RFD: Ways and Means Education
5 First Read: 02-MAR-21

1 packaging, storage, distribution, marketing, and sales of
2 those products or commodities, or the design, creation,
3 manufacture, marketing, or sales of technology, equipment, or
4 supplies related to those businesses.

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

7 (4) DEPARTMENT. A department designated by the
8 Office of the Governor.

9 (5) FOLLOW-ON CAPITAL. The sum of 50 percent of each
10 initial growth investment, subsequent growth investments made
11 to satisfy subdivision (a) (2) of Section 5 and any additional
12 financing received by a growth business on or after the date
13 of the initial growth investment, including senior debt,
14 subordinate debt, mortgage debt, equipment financing,
15 mezzanine debt, convertible notes, revolving lines of credit,
16 letters of credit, capital leases, preferred equity,
17 participating preferred equity, convertible preferred equity,
18 common equity, warrants and simple agreements for future
19 equity and any other financing approved by the department.

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

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

4 a. Has fewer than 200 employees.

5 b. Has its principal business operations in one or
6 more growth zones in the state.

7 c. Is made in any of the following:

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

13 2. An agribusiness.

14 3. A minority owned business.

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

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

1 of a draw on the SSBCI loan with the remaining 50 percent
2 funded with the growth fund's matching capital.

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

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

15 (12) INVESTMENT AUTHORITY. The amount stated on the
16 notice issued under subsection (g) of Section 3 certifying the
17 growth fund.

18 (13) JOBS RETAINED. The number of high wage
19 employment positions that existed before the initial growth
20 investment and for which the growth business's chief executive
21 officer or similar officer certifies that the high wage
22 employment position would have been eliminated but for the
23 initial growth investment. The retained jobs of a growth
24 business shall be calculated each year based on the monthly
25 average of high wage employment positions. The reported number
26 of retained jobs may not exceed the number reported on the
27 initial report required under subsection (a) of Section 6.

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

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

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

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

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

20 2. If the preceding calendar year contains the
21 initial growth investment, the monthly average of high wage
22 employment positions for the months including and after the
23 initial growth investment and before the end of the preceding
24 calendar year.

25 b. The number of high wage employment positions at
26 the growth business on the date of the initial growth
27 investment.

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

3 (18) NEW ANNUAL JOBS AND JOBS RETAINED PERCENTAGE.

4 Fifty percent multiplied by a fraction, the numerator of which
5 is the number of new annual jobs and jobs retained reported in
6 annual reports submitted to the department pursuant to
7 subsection (b) of Section 6 and the denominator of which is
8 the number of new annual jobs and jobs retained set forth in
9 the growth fund's certification provided pursuant to
10 subsection (g) of Section 3. The percentage may exceed 50
11 percent.

12 (19) PRINCIPAL BUSINESS OPERATIONS. The place or

13 places where at least 60 percent of the business's employees
14 work or where employees that are paid at least 60 percent of
15 the business's payroll work. A business that has agreed to
16 relocate or hire new employees using the proceeds of a growth
17 investment to establish its principal business operations in a
18 growth zone in the state shall be deemed to have its principal
19 business operations in this new location, provided the
20 business satisfies this requirement within 180 days after
21 receiving the growth investment, unless the department agrees
22 to a later date.

23 (20) PROGRAM EXIT. The process described in

24 subsection (e) of Section 5.

25 (21) SSBCI FUND. The SSBCI Alabama Rural,

26 Agribusiness, and Opportunity Zone Jobs Act Account which is
27 hereby established.

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

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

9 a. An interest rate of one percent interest
10 compounding annually which shall be due upon program exit or
11 acceleration pursuant to Section 5.

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

17 c. Subordination to matching capital funded directly
18 or indirectly as debt.

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

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

25 (b) Within 30 days of this state's receipt of an
26 allocation of funds pursuant to Subtitle C of Title III of the
27 American Rescue Plan Act of 2021, the department shall accept

1 applications for certification as a growth fund on a form
2 prescribed by the department. The application shall include
3 all of the following:

4 (1) The total investment authority and SSBCI loan
5 sought by the applicant not to exceed fifteen million dollars
6 (\$15,000,000) and seven million five hundred thousand dollars
7 (\$7,500,000), respectively.

8 (2) Evidence that the applicant, or an affiliate of
9 the applicant, is licensed as a rural business investment
10 company under 7 U.S.C. § 2009cc or as a small business
11 investment company under 15 U.S.C. § 681, including a
12 certificate executed by an executive officer of the applicant
13 attesting that the license remains in effect and has not been
14 revoked, and that at least one principal in a rural business
15 investment company or a small business investment company is,
16 and has been for at least five years, an officer or employee
17 of the applicant or an affiliate of the applicant on the date
18 the application is submitted.

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

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

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

12 (6) A letter of credit issued to the applicant from
13 a depository institution equal to at least 50 percent of the
14 amount of investment authority requested or similar evidence
15 that the applicant has secured matching capital equal to such
16 amount.

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

19 (c) Within 30 days after receipt of a completed
20 application containing the information set forth in subsection
21 (b), the department shall grant or deny the application. The
22 department shall deem applications received on the same day to
23 have been received simultaneously. The department shall
24 approve investment authority up to an amount that would allow
25 not more than fifty million dollars (\$50,000,000) of
26 investment authority and twenty-five million dollars
27 (\$25,000,000) of SSBCI loans. If requests for investment

1 authority and SSBCI loans exceed this limitation, the
2 department shall proportionally reduce the investment
3 authority and SSBCI loan for each approved application as
4 necessary to avoid exceeding the limit.

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

7 (1) The application is incomplete.

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

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

15 (4) The department has already approved the maximum
16 amount of investment authority and SSBCI loans allowed under
17 subsection (c).

18 (e) If the department denies an application, the
19 applicant may provide additional information to the department
20 to complete, clarify, or cure defects in the application
21 identified by the department, except for failure to comply
22 with subdivision (b) (7), within 15 days of the notice of
23 denial for reconsideration and determination. The department
24 shall review and reconsider the applications for which
25 additional information is provided within the 15-day period
26 within 30 days and, if approved, the application shall be
27 considered complete as of its original submission date.

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

4 (g) Upon approval of an application, the department
5 shall certify the applicant as a growth fund, specifying the
6 amount of the applicant's investment authority, SSBCI loan,
7 aggregate required matching capital, and the number of new
8 annual jobs and jobs retained that will be required of the
9 growth fund, which shall match those projected in the growth
10 fund's application, prorated on the basis of the investment
11 authority awarded to the growth fund.

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

15 Section 4. (a) Within 30 days of certification of a
16 growth fund, the department shall enter into the SSBCI loan
17 with the growth fund and segregate for draws by the growth
18 fund in the SSBCI fund an amount of SSBCI funding equal to the
19 SSBCI loan awarded to such growth fund.

20 (b) A growth fund, before making a growth
21 investment, shall request from the department a written
22 opinion as to whether the business in which it proposes to
23 invest satisfies the definition of a growth business. The
24 department, not later than 15 business days after the date of
25 receipt of the request, shall notify the growth fund of its
26 determination. If the department fails to notify the growth
27 fund of its determination within 15 business days, the

1 business in which the growth fund proposes to invest shall be
2 considered a growth business. Each request for a written
3 opinion shall be accompanied by a five hundred dollar (\$500)
4 opinion fee payable to the department.

5 (c) At least five business days prior to a growth
6 investment, a growth fund shall make a draw request on the
7 SSBCI loan to the department. The draw on the SSBCI loan shall
8 not exceed 50 percent of the proposed growth investment. At
9 least two business days prior to a growth investment, a growth
10 fund shall notify the department of the date of the closing of
11 the growth investment and the department shall transfer the
12 amount of draw requested from the SSBCI fund to an account
13 designated by the growth fund on the following day. The growth
14 fund shall return the proceeds of the draw if the growth
15 investment is not made within the three business days of
16 receipt of the draw unless the return is waived by the
17 department.

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

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

22 a. The growth fund does not invest 100 percent of
23 its investment authority in growth investments in this state,
24 of which at least 25 percent shall be invested in agribusiness
25 and at least 25 percent shall be invested in minority owned
26 businesses, and of which at least 50 percent shall be invested
27 in growth businesses located in rural areas and at least 25

1 percent shall be invested in growth businesses located in
2 Qualified Opportunity Zones.

3 b. With respect to awards of investment authority
4 less than seven million five hundred thousand dollars
5 (\$7,500,000), the growth fund does not invest 100 percent of
6 its investment authority in this state, of which at least 50
7 percent of growth investments shall be made in agribusiness or
8 minority owned businesses and at least 75 percent of growth
9 investments shall be made in rural areas or opportunity zones.

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

24 (3) The growth fund, before program exit, makes a
25 distribution or payment that results in the growth fund having
26 less than 100 percent of its investment authority invested in
27 growth investments in this state or available for investment

1 in growth investments and held in cash and other marketable
2 securities.

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

13 (b) The maximum amount of growth investments in a
14 growth business including amounts invested in affiliates of
15 the growth business, that may be counted towards its
16 satisfaction of the requirements of subdivisions (a)(1) and
17 (2) is the greater of three million dollars (\$3,000,000) or 20
18 percent of its total investment authority, exclusive of repaid
19 or redeemed growth investments.

20 (c) Upon violation of this section, the department
21 shall notify the growth fund. The growth fund shall have 90
22 days from the date the notice was received to correct any
23 violation outlined in the notice to the satisfaction of the
24 department and to avoid the penalties set forth in subsection
25 (a).

26 (d) If an SSBCI loan is accelerated, the remaining
27 draws on the SSBCI loan and associated investment authority

1 shall not count toward the limit on the SSBCI loans and total
2 investment authority described by subsection (c) of Section 3.
3 The department shall first award reverted investment authority
4 and SSBCI loans pro rata basis to each growth fund that was
5 awarded less than the amount requested in an application. The
6 department may award any remaining investment authority and
7 SSBCI loans to new applicants.

8 (e) (1) On or after the seventh anniversary of the
9 closing date, a growth fund may apply to the department to
10 exit the program and no longer be subject to regulation except
11 as set forth in subdivision (2). The application shall include
12 a calculation of the follow-on percentage and the new jobs and
13 retained jobs percentage. The department shall respond to the
14 application within 30 days of receipt. In evaluating the
15 application, the fact that the SSBCI loan has not been
16 violated and that the growth fund has not received a notice of
17 revocation that has not been cured under subsection (c) shall
18 be sufficient evidence to prove that the growth fund is
19 eligible for exit. The department may not unreasonably deny an
20 application submitted under this subsection. If the
21 application is denied, the notice shall include the reasons
22 for the determination.

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

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

1 b. Second, to pay management fees unless prohibited
2 under Section 5.

3 c. Third, to pay principal and interest on the SSBCI
4 loan, if applicable.

5 d. Fourth, to make distributions to its equity
6 holders.

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

11 (1) A bank statement evidencing each growth
12 investment.

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

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

21 (b) Thereafter, if not previously provided pursuant
22 to subsection (a), each growth fund shall submit a report to
23 the department on or before April 15 of each year prior to
24 program exit and include all of the following unless
25 previously provided:

26 (1) A bank statement evidencing each growth
27 investment.

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

5 (3) The number of high wage employment positions at
6 each growth business on the date of the growth fund's initial
7 growth investment as evidenced on a payroll report certified
8 by the growth business.

9 (4) The number of new annual jobs and jobs retained
10 at each growth business as of December 31 of the prior
11 calendar year as evidenced on a payroll report certified by
12 the growth business.

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

15 (6) The cumulative amount of growth investments made
16 in growth businesses.

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

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

25 (9) Any other information required by the
26 department.

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

16
17
18
19

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
Education..... 02-MAR-21

Read for the second time and placed
on the calendar with 1 substitute
and..... 15-APR-21

Read for the third time and passed
as amended..... 20-APR-21

Yeas 99, Nays 0, Abstains 1

Jeff Woodard
Clerk