

1 HB473
2 209000-1
3 By Representative Garrett
4 RFD: Ways and Means Education
5 First Read: 02-MAR-21

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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 by the Department of Commerce and would
12 authorize the department 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 and minority owned
16 businesses.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

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

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

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

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

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

24 (4) DEPARTMENT. The Department of Commerce.

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

1 a. Has fewer than 200 employees.

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

4 c. Is any of the following:

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

10 2. An agribusiness.

11 3. A minority owned business.

12 4. A rural hospital or health clinic.

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

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

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

1 decennial census, or a qualified opportunity zone as
2 designated pursuant to 26 U.S.C. §1400Z-2.

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

11 (10) INVESTMENT AUTHORITY. The amount stated on the
12 notice issued under subsection (e) of Section 3 certifying the
13 growth fund. At least 60 percent of a growth fund's investment
14 authority shall be comprised of investor contributions.

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

25 (12) 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 Section 7.

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

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

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

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

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

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

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

1 work or where employees that are paid at least 60 percent of
2 the business's payroll work. A business that has agreed to
3 relocate or hire new employees using the proceeds of a growth
4 investment to establish its principal business operations in a
5 growth zone in the state shall be deemed to have its principal
6 business operations in this new location, provided the
7 business satisfies this requirement within 180 days after
8 receiving the growth investment, unless the department agrees
9 to a later date.

10 (16) STATE PREMIUM OR OTHER TAX LIABILITY. Any
11 liability incurred by any entity under Sections 27-4A-3,
12 27-3-29, and 40-16-4, Code of Alabama 1975.

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

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

19 (2) Evidence that the applicant or an affiliate of
20 the applicant is licensed as a rural business investment
21 company under 7 U.S.C. § 2009cc or as a small business
22 investment company under 15 U.S.C. § 681, including a
23 certificate executed by an executive officer of the applicant
24 attesting that the license remains in effect and has not been
25 revoked, and that at least one principal in a rural business
26 investment company or a small business investment company is,
27 and has been for at least five 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 nonpublic companies located in nonmetropolitan counties, as
7 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 nonrefundable 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 nine million dollars (\$9,000,000) 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 (a)(5) does not demonstrate that the applicant's
19 business plan will result in a positive economic impact on
20 this state over a 10-year period that exceeds the cumulative
21 amount of tax credits that would be issued to the applicant's
22 investors.

23 (4) The investor contributions described in
24 affidavits submitted under subdivision (a)(6) do not equal at
25 least 75 percent of the total amount of investment authority
26 sought under the applicant's business 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 (c)(4), within 15 days of the notice of
9 denial for reconsideration and determination. The department
10 shall review and reconsider the applications for which
11 additional information is provided within the 15-day period
12 within 30 days and, if approved, the application shall be
13 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, 2023, 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 nonrefundable and may not be sold,
13 transferred, or allocated to any other entity other than an
14 affiliate that was an affiliate at the time of the submission
15 of the investor's affidavit included in the growth fund's
16 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 (f) (2) of Section
3 3 if any of the following occur with respect to a growth fund
4 before the growth fund exits the program in accordance with
5 subsection (e):

6 (1) Within 12 months 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 owned businesses, and at least 50 percent of
11 its total investment authority invested in growth businesses
12 located in rural areas and at least 25 percent of its total
13 investment authority invested in growth businesses located in
14 Qualified Opportunity Zones, and maintain that level of
15 investment until the sixth anniversary of the closing date.

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

1 reinvested in one or more growth investments by the end of the
2 following calendar year.

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

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

20 (b) The maximum amount of growth investments in a
21 growth business, including amounts invested in affiliates of
22 the growth business, that a growth fund may count towards its
23 satisfaction of the requirements of subdivisions (1) and (2)
24 of subsection (a) is the greater of five million dollars
25 (\$5,000,000) or 20 percent of its investment authority,
26 exclusive of repaid or redeemed growth investments.

1 (c) Before revoking tax credit certificates under
2 this section, the department shall notify the growth fund of
3 the reasons for the pending revocation. The growth fund shall
4 have 90 days from the date the notice was received to correct
5 any violation outlined in the notice to the satisfaction of
6 the department and avoid revocation of the tax credit
7 certificate.

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

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

1 (c) shall be sufficient evidence to prove that the growth fund
2 is eligible for exit. The department may not unreasonably deny
3 an application submitted under this subsection. If the
4 application is denied, the notice shall include the reasons
5 for the determination. On or after an exit under this
6 subsection, the state shall receive a 10 percent share of any
7 distributions other than eligible distributions by the growth
8 fund that made a growth investment, other than the amount
9 necessary for a growth fund to repay principal and interest on
10 its indebtedness.

11 (2) A growth fund may not make distributions or pay
12 any fees to its equity holders even after its exit from the
13 program in accordance with subdivision (1) unless and until it
14 has made cumulative growth investments equal to at least 150
15 percent of its investment authority, with at least 25 percent
16 of its cumulative growth investments in agribusiness and at
17 least 25 percent of its cumulative growth investments in
18 minority owned businesses in the state and at least 50 percent
19 of its cumulative growth investments in growth businesses
20 located in rural areas of the state. If applicable, a growth
21 fund shall continue to report the amount of growth investments
22 made to the department annually until it has made growth
23 investments equal to at least 150 percent of its investment
24 authority.

25 (3) At any time the growth fund proposes to make a
26 distribution to its equity holders, the growth fund shall
27 remit to the department, if applicable, a payment equal to the

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

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

17 Section 6. A growth fund, before making a growth
18 investment, may request from the department a written opinion
19 as to whether the business in which it proposes to invest
20 satisfies the definition of a growth business. The department,
21 not later than 15 business days after the date of receipt of
22 the request, shall notify the growth fund of its
23 determination. If the department fails to notify the growth
24 fund of its determination within 15 business days, the
25 business in which the growth fund proposes to invest shall be
26 considered a growth business. Each request for a written

1 opinion shall be accompanied by a five hundred dollar (\$500)
2 opinion fee payable to the department.

3 Section 7. (a) Each growth fund shall submit a
4 report to the department on or before the fifth business day
5 after each anniversary of the closing date prior to its exit
6 from the program in accordance with subsection (e) of Section
7 5. The report shall provide documentation as to each growth
8 investment made by the growth fund and include all of the
9 following:

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

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

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.

20 (4) The number of new annual jobs and jobs retained
21 at each 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) Any other information required by the
6 department.

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

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

13 Section 8. The department shall report to the
14 Legislature beginning in 2023 pursuant to the provisions of
15 Section 40-1-50, Code of Alabama 1975, and rules adopted by
16 the Department of Revenue providing an assessment of the
17 incentives allowed in this act.

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

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

23 Section 10. The department shall notify the
24 Department of Insurance of the name of any insurance company
25 allocated tax credits under this act and the amount of the
26 credits.

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

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