

**SB315 INTRODUCED**



1 SB315  
2 MF9KWW1-1  
3 By Senator Singleton  
4 RFD: Finance and Taxation General Fund  
5 First Read: 09-Apr-24



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SYNOPSIS:

The Alabama Rural, Agribusiness, and Opportunity Zone Jobs Act, enacted in 2021, created a procedure for the certification of growth funds by the Alabama Innovation Corporation and authorized the Alabama Innovation Corporation to accept federal funds from the American Rescue Plan Act of 2021 and issue state matching capital to taxpayers who make investor contributions to a certified growth fund to make capital accessible to rural and minority owned businesses.

This bill would authorize the Alabama Innovation Corporation to issue state matching capital to certified growth funds, contingent upon a legislative appropriation of additional funds.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to the Alabama Rural, Agribusiness, and Opportunity Zone Jobs Act; to amend Sections 40-9H-2 through 40-9H-5, and 40-9H-7, Code of Alabama 1975; to authorize the issuance of state matching capital to certified growth funds



## SB315 INTRODUCED

29 to make capital accessible to rural and minority owned  
30 businesses; to repeal Section 40-9H-9, Code of Alabama 1975,  
31 which provides legislative intent relating to funds from the  
32 American Rescue Plan Act of 2021; and to make the act  
33 operative upon a specified appropriation.

34 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

35 Section 1. Section 40-9H-2, 40-9H-3, 40-9H-4, 40-9H-5,  
36 and 40-9H-7, Code of Alabama 1975, are amended to read as  
37 follows:

38 "§40-9H-2

39 As used in this chapter, the following words shall have  
40 the following meanings:

41 (1) AFFILIATE. An entity that directly, or indirectly  
42 through one or more intermediaries, controls, is controlled  
43 by, or is under common control with another entity. For the  
44 purposes of this subdivision, an entity is controlled by  
45 another entity if the controlling person holds, directly or  
46 indirectly, the majority voting or ownership interest in the  
47 controlled person or has control over the day-to-day  
48 operations of the controlled person by contract or by law.

49 (2) AGRIBUSINESS. A business that earns a majority of  
50 its revenues from either farming, forestry, biotechnology,  
51 fisheries, or biofuels and the processing, manufacturing,  
52 packaging, storage, distribution, marketing, and sales of  
53 those products or commodities, or the design, creation,  
54 manufacture, marketing, or sales of technology, equipment, or  
55 supplies related to those businesses.

56 (3) CLOSING DATE. The date the department and the



## SB315 INTRODUCED

57 growth fund execute the ~~SSBCI~~-loan agreement.

58 (4) DEPARTMENT. ~~The state body, department,~~  
59 ~~subdivision, or agency authorized by the state to direct~~  
60 ~~federal funds available under Subtitle C of Title III of the~~  
61 ~~American Rescue Plan Act of 2021~~The Alabama Innovation  
62 Corporation.

63 (5) FOLLOW-ON CAPITAL. The sum of 50 percent of each  
64 initial growth investment, subsequent growth investments made  
65 to satisfy subdivision (a) (2) of Section 40-9H-5 and any  
66 additional financing received by a growth business on or after  
67 the date of the initial growth investment, including senior  
68 debt, subordinate debt, mortgage debt, equipment financing,  
69 mezzanine debt, convertible notes, revolving lines of credit,  
70 letters of credit, capital leases, preferred equity,  
71 participating preferred equity, convertible preferred equity,  
72 common equity, warrants and simple agreements for future  
73 equity, and any other financing approved by the department.

74 (6) FOLLOW-ON CAPITAL PERCENTAGE. Fifty percent  
75 multiplied by a fraction, the numerator of which is the  
76 aggregate follow-on capital reported to the department in  
77 reports submitted pursuant to subsection (b) of Section  
78 40-9H-6 and the denominator of which is 10 times the amount of  
79 the ~~SSBCI~~-loan. The percentage may exceed 50 percent.

80 ~~(7)~~ (9) GROWTH BUSINESS. A business to which all of the  
81 following apply at the time of the initial investment in the  
82 company by a growth fund:

83 a. Has fewer than 200 employees.

84 b. Has its principal business operations in one or more



## SB315 INTRODUCED

85 growth zones in the state.

86 c. Is made in any of the following:

87 1. Any business in North American Industry

88 Classification System codes 11, 21, 22, 23, 31 through 33, 48

89 through 49, 54, or 62 or, if not engaged in those industries,

90 the department determines that the investment will be

91 beneficial to the growth zone.

92 2. An agribusiness.

93 3. A minority owned business.

94 ~~(8)~~ (10) GROWTH FUND. An entity certified by the

95 department under subsection (g) of Section 40-9H-3.

96 ~~(9)~~ (11) GROWTH INVESTMENT. Any capital or equity

97 investment in a growth business or any loan to a growth

98 business with a stated maturity at least one year after the

99 date of issuance, provided that with respect to any loan to a

100 growth business secured by accounts receivable, inventory,

101 real estate, or other tangible property, the chief executive

102 officer or similar official of the growth business executes an

103 affidavit that the business sought and was denied similar

104 financing from a banking institution doing business in this

105 state. Fifty percent of a growth investment shall be comprised

106 of a draw on the ~~SSBCI~~ loan with the remaining 50 percent

107 funded with the growth fund's matching capital.

108 ~~(10)~~ (12) GROWTH ZONE. A rural county of the state with

109 less than 50,000 in population pursuant to the 2020 Federal

110 Decennial Census, or a qualified opportunity zone as

111 designated pursuant to 26 U.S.C. § 1400Z-1 with a poverty rate

112 of at least 20 percent, or otherwise meeting the definition of



## SB315 INTRODUCED

113 low-income community in 26 U.S.C. § 45D.

114 ~~(11)~~ (13) HIGH WAGE EMPLOYMENT POSITION. An employment  
115 position that is filled, pays a wage of at least 110 percent  
116 of the county average as noted in the most recent quarterly  
117 County Employment and Wages report by the Bureau of Labor  
118 Statistics of the United States Department of Labor, and  
119 requires at least 35 hours of work per week or any other  
120 period of time generally accepted by custom, industry, or  
121 practice as full-time employment.

122 ~~(12)~~ (14) INVESTMENT AUTHORITY. The amount stated on the  
123 notice issued under subsection (g) of Section 40-9H-3  
124 certifying the growth fund.

125 ~~(13)~~ (15) JOBS RETAINED. The number of high wage  
126 employment positions that existed before the initial growth  
127 investment and for which the growth business's chief executive  
128 officer or similar officer certifies that the high wage  
129 employment position would have been eliminated but for the  
130 initial growth investment. The retained jobs of a growth  
131 business shall be calculated each year based on the monthly  
132 average of high wage employment positions. The reported number  
133 of retained jobs may not exceed the number reported on the  
134 initial report required under subsection (a) of Section  
135 40-9H-6.

136 ~~(14)~~ (17) MANAGEMENT FEE. An amount equal to three  
137 percent per annum of the growth fund's investment authority  
138 that accrues annually, but shall not be paid until the growth  
139 fund exits the program in accordance with subsection (e) of  
140 Section 40-9H-5.



## SB315 INTRODUCED

141           ~~(15)~~ (18) MATCHING CAPITAL. An amount of capital raised  
142 by the growth fund as debt or equity and invested in growth  
143 businesses. Matching capital shall only be considered debt of  
144 the growth fund and eligible for repayment pursuant to  
145 paragraph (e) (2)a. of Section 40-9H-5 if the growth fund  
146 provides evidence of such direct or indirect debt to the  
147 department.

148           ~~(16)~~ (19) MINORITY OWNED BUSINESS. A business that is  
149 more than 50 percent owned by one or more individuals of  
150 African-American, Asian, or Hispanic origin.

151           ~~(17)~~ (20) NEW ANNUAL JOBS. Except as provided in  
152 paragraph c., the term means the difference between paragraphs  
153 a. and b. as follows:

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

156           2. If the preceding calendar year contains the initial  
157 growth investment, the monthly average of high wage employment  
158 positions for the months including and after the initial  
159 growth investment and before the end of the preceding calendar  
160 year.

161           b. The number of high wage employment positions at the  
162 growth business on the date of the initial growth investment.

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

165           ~~(18)~~ (21) NEW ANNUAL JOBS AND JOBS RETAINED PERCENTAGE.  
166 Fifty percent multiplied by a fraction, the numerator of which  
167 is the number of new annual jobs and jobs retained reported in  
168 annual reports submitted to the department pursuant to



## SB315 INTRODUCED

169 subsection (b) of Section 40-9H-6 and the denominator of which  
170 is the number of new annual jobs and jobs retained set forth  
171 in the growth fund's certification provided pursuant to  
172 subsection (g) of Section 40-9H-3. The percentage may exceed  
173 50 percent.

174 ~~(19)~~ (22) PRINCIPAL BUSINESS OPERATIONS. The place or  
175 places where at least 60 percent of the business's employees  
176 work or where employees that are paid at least 60 percent of  
177 the business's payroll work. A business that has agreed to  
178 relocate or hire new employees using the proceeds of a growth  
179 investment to establish its principal business operations in a  
180 growth zone in the state shall be deemed to have its principal  
181 business operations in this new location, provided the  
182 business satisfies this requirement within 180 days after  
183 receiving the growth investment, unless the department agrees  
184 to a later date.

185 ~~(20)~~ (23) PROGRAM EXIT. The process described in  
186 subsection (e) of Section 40-9H-5.

187 ~~(21) SSBCI. The federal State Small Business Credit~~  
188 ~~Initiative pursuant to Subtitle C of Title III of the American~~  
189 ~~Rescue Plan of 2021.~~

190 ~~(22)~~ (7) ~~SSBCI~~-FUND. The ~~SSBCI~~-Alabama Rural,  
191 Agribusiness, and Opportunity Zone Jobs Act Account which is  
192 hereby established.

193 ~~(23)~~ (8) ~~SSBCI~~-FUNDING.

194 ~~An amount equal to twenty-five million dollars~~  
195 ~~(\$25,000,000) of the State of Alabama's allocation of funds~~  
196 ~~pursuant to Subtitle C of Title III of the American Rescue~~





## SB315 INTRODUCED

197 ~~Plan Act of 2021 which shall be deposited in the SSBCI fund.~~

198 An amount up to twenty-five million dollars  
199 (\$25,000,000) of monies appropriated to the Alabama Rural,  
200 Agribusiness, and Opportunity Zone Jobs Act Account.

201 ~~(24)~~ (16) ~~SSBCI~~-LOAN. A loan made to a growth fund using  
202 ~~SSBCI~~-funding. The department and the growth fund shall  
203 execute a loan agreement which shall provide for:

204 a. An interest rate of one percent interest compounding  
205 annually which shall be due upon program exit or acceleration  
206 pursuant to Section 40-9H-5.

207 b. Forgiveness at exit of a percentage of principal and  
208 interest due on the ~~SSBCI~~-loan equal to the sum of the  
209 follow-capital percentage and the new annual and jobs retained  
210 percentage, provided forgiveness shall not be available with  
211 respect to ~~SSBCI~~-loans accelerated pursuant to Section  
212 40-9H-5.

213 c. Subordination to matching capital funded directly or  
214 indirectly as debt, which subordination may be revoked  
215 pursuant to Section 40-9H-5.

216 d. Draws in connection with growth investments in  
217 accordance with subsection (c) of Section 40-9H-4."

218 "§40-9H-3

219 ~~(a) Upon receipt of an allocation of funds pursuant to~~  
220 ~~Subtitle C of Title III of the American Rescue Plan Act of~~  
221 ~~2021, the department shall cause the SSBCI funding to be~~  
222 ~~deposited in the SSBCI fund.~~

223 ~~(b) Within 30 days of the approval of the state's~~  
224 ~~application for federal funds pursuant to Subtitle C of Title~~



## SB315 INTRODUCED

225 ~~III of the American Rescue Plan Act of 2021,~~ (a) Within 90 days  
226 of receiving an appropriation of funds, the department shall  
227 accept applications for certification as a growth fund on a  
228 form prescribed by the department. The application shall  
229 include all of the following:

230 (1) The total investment authority and ~~SSBCI~~-loan  
231 sought by the applicant not to exceed fifteen million dollars  
232 (\$15,000,000) and seven million five hundred thousand dollars  
233 (\$7,500,000), respectively.

234 (2) Evidence that the applicant, or an affiliate of the  
235 applicant, is licensed as a rural business investment company  
236 under 7 U.S.C. § 2009cc or as a small business investment  
237 company under 15 U.S.C. § 681, including a certificate  
238 executed by an executive officer of the applicant attesting  
239 that the license remains in effect and has not been revoked,  
240 and that at least one principal in a rural business investment  
241 company or a small business investment company is, and has  
242 been for at least five years, an officer or employee of the  
243 applicant or an affiliate of the applicant on the date the  
244 application is submitted.

245 (3) Evidence that as of the date the application is  
246 submitted, the applicant or affiliates of the applicant have  
247 invested at least fifty million dollars (\$50,000,000) in, or  
248 lent at least fifty million dollars (\$50,000,000) to,  
249 nonpublic companies located in nonmetropolitan counties, as  
250 defined by the Office of Management and Budget within the  
251 Office of the President of the United States, on the basis of  
252 county or county-equivalent units and invested at least



## SB315 INTRODUCED

253 twenty-five million dollars (\$25,000,000) in, or lent at least  
254 twenty-five million dollars (\$25,000,000) to, minority owned  
255 businesses.

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

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

267 (6) A letter of credit issued to the applicant from a  
268 depository institution equal to at least 50 percent of the  
269 amount of investment authority requested or similar evidence  
270 that the applicant has secured matching capital equal to such  
271 amount.

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

274 (8) An education and marketing plan to educate growth  
275 businesses regarding the availability of funds and  
276 requirements for participation pursuant to this chapter.

277 ~~(e)~~ (b) Within 30 days after receipt of a completed  
278 application containing the information set forth in subsection  
279 ~~(b)~~ (a), the department shall grant or deny the application.  
280 The department shall deem applications received on the same



## SB315 INTRODUCED

281 day to have been received simultaneously. The department shall  
282 approve investment authority up to an amount that would allow  
283 not more than fifty million dollars (\$50,000,000) of  
284 investment authority and twenty-five million dollars  
285 (\$25,000,000) of ~~SSBCI~~ loans. If requests for investment  
286 authority and ~~SSBCI~~ loans exceed this limitation, the  
287 department shall proportionally reduce the investment  
288 authority and ~~SSBCI~~ loan for each approved application as  
289 necessary to avoid exceeding the limit.

290 ~~(d)~~ (c) The department shall deny an application if any  
291 of the following are true:

292 (1) The application is incomplete.

293 (2) The applicant does not satisfy all the criteria  
294 described in subdivisions (a) (2), (a) (3), (a) (6), and (a) (7)  
295 ~~of subsection (b)~~.

296 (3) The revenue impact assessment submitted under  
297 subdivision ~~(b)~~ (a) (5) does not demonstrate that the  
298 applicant's business plan will result in an economic impact on  
299 this state over a 10-year period that exceeds the growth  
300 fund's ~~SSBCI~~ loan.

301 (4) The department has already approved the maximum  
302 amount of investment authority and ~~SSBCI~~ loans allowed under  
303 subsection ~~(e)~~ (b).

304 ~~(e)~~ (d) If the department denies an application, the  
305 applicant may provide additional information to the department  
306 to complete, clarify, or cure defects in the application  
307 identified by the department, except for failure to comply  
308 with subdivision ~~(b)~~ (a) (6), within 15 days of the notice of



## SB315 INTRODUCED

309 denial for reconsideration and determination. The department  
310 shall review and reconsider the applications for which  
311 additional information is provided within the 15-day period  
312 within 30 days and, if approved, the application shall be  
313 considered complete as of its original submission date.

314 ~~(f)~~ (e) The department may not reduce the requested  
315 investment authority or deny a growth fund application for  
316 reasons other than those described in subsections ~~(e)~~ and  
317 ~~(d)~~ (b) and (c).

318 ~~(g)~~ (f) Upon approval of an application, the department  
319 shall certify the applicant as a growth fund, specifying the  
320 amount of the applicant's investment authority, ~~SSBCI~~-loan,  
321 aggregate required matching capital, and the number of new  
322 annual jobs and jobs retained that will be required of the  
323 growth fund, which shall match those projected in the growth  
324 fund's application, prorated on the basis of the investment  
325 authority awarded to the growth fund.

326 ~~(h)~~ (g) An approved growth fund may apply for additional  
327 investment authority and ~~SSBCI~~-loans once it has invested 100  
328 percent of its outstanding investment authority."

329 "§40-9H-4

330 (a) Within 30 days of certification of a growth fund,  
331 the department shall enter into the ~~SSBCI~~-loan agreement with  
332 the growth fund and segregate for draws by the growth fund in  
333 the ~~SSBCI~~-fund an amount of ~~SSBCI~~-funding equal to the ~~SSBCI~~  
334 loan awarded to such growth fund.

335 (b) A growth fund, before making a growth investment,  
336 shall request from the department a written opinion as to



## SB315 INTRODUCED

337 whether the business in which it proposes to invest satisfies  
338 the definition of a growth business. The department, not later  
339 than 15 business days after the date of receipt of the  
340 request, shall notify the growth fund of its determination. If  
341 the department fails to notify the growth fund of its  
342 determination within 15 business days, the business in which  
343 the growth fund proposes to invest shall be considered a  
344 growth business. Each request for a written opinion shall be  
345 accompanied by a five hundred dollar (\$500) opinion fee  
346 payable to the department.

347 (c) At least five business days prior to a growth  
348 investment, a growth fund shall make a draw request on the  
349 ~~SSBCI~~-loan to the department. The draw on the ~~SSBCI~~-loan shall  
350 not exceed 50 percent of the proposed growth investment. At  
351 least two business days prior to a growth investment, a growth  
352 fund shall notify the department of the date of the closing of  
353 the growth investment and the department shall transfer the  
354 amount of draw requested from the ~~SSBCI~~-fund to an account  
355 designated by the growth fund on the following day. The growth  
356 fund shall return the proceeds of the draw if the growth  
357 investment is not made within the three business days of  
358 receipt of the draw unless the return is waived by the  
359 department."

360 "§40-9H-5

361 (a) A growth fund shall forfeit its management fee, the  
362 ~~SSBCI~~-loan shall be immediately due and its subordination  
363 immediately revoked, and remaining draws on the ~~SSBCI~~-loan  
364 shall be forfeited if:



## SB315 INTRODUCED

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

366 a. The growth fund does not invest 100 percent of its  
367 investment authority in growth investments in this state, of  
368 which at least 25 percent shall be invested in agribusiness  
369 and at least 25 percent shall be invested in minority owned  
370 businesses, and of which at least 50 percent shall be invested  
371 in growth businesses located in rural areas and at least 25  
372 percent shall be invested in growth businesses located in  
373 qualified opportunity zones.

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

381 (2) The growth fund, after satisfying subdivision (1),  
382 fails to maintain growth investments equal to 100 percent of  
383 its investment authority until the sixth anniversary of the  
384 closing date in accordance with the levels set forth in  
385 subdivision (1). For the purposes of this subdivision, a  
386 growth investment is maintained even if it is sold or repaid  
387 so long as the growth fund reinvests an amount equal to the  
388 capital returned or recovered from the original investment,  
389 exclusive of any profits realized, in other growth investments  
390 in this state within 12 months of the receipt of the capital.  
391 Amounts received periodically by a growth fund shall be  
392 treated as continuously invested in growth investments if the



## SB315 INTRODUCED

393 amounts are reinvested in one or more growth investments by  
394 the end of the following calendar year.

395 (3) The growth fund, before program exit, makes a  
396 distribution or payment that results in the growth fund having  
397 less than 100 percent of its investment authority invested in  
398 growth investments in this state or available for investment  
399 in growth investments and held in cash and other marketable  
400 securities, or makes a distribution or payment to an equity  
401 holder, other than to fund payments with respect to matching  
402 capital funded indirectly as debt, without consent of the  
403 department.

404 (4) The growth fund makes a growth investment in a  
405 growth business that directly or indirectly through an  
406 affiliate owns, has the right to acquire an ownership interest  
407 in, makes a loan to, or makes an investment in the growth  
408 fund, an affiliate of the growth fund, or an investor in the  
409 growth fund. This subdivision does not apply to investments in  
410 publicly traded securities by a growth business or an owner or  
411 affiliate of the growth business. For purposes of this  
412 subdivision, a growth fund shall not be considered an  
413 affiliate of a growth business solely because of its growth  
414 investment.

415 (b) The maximum amount of growth investments in a  
416 growth business, including amounts invested in affiliates of  
417 the growth business, that may be counted towards its  
418 satisfaction of the requirements of subdivisions (a)(1) and  
419 (2) is the greater of three million dollars (\$3,000,000) or 20  
420 percent of its total investment authority, exclusive of repaid





## SB315 INTRODUCED

421 or redeemed growth investments.

422 (c) Upon violation of this section, the department  
423 shall notify the growth fund. The growth fund shall have 90  
424 days from the date the notice was received to correct any  
425 violation outlined in the notice to the satisfaction of the  
426 department and to avoid the penalties set forth in subsection  
427 (a).

428 (d) If an ~~SSBCI~~-loan is accelerated, the remaining  
429 draws on the ~~SSBCI~~-loan and associated investment authority  
430 shall not count toward the limit on the ~~SSBCI~~-loans and total  
431 investment authority described by subsection (c) of Section  
432 40-9H-3. The department shall first award reverted investment  
433 authority and ~~SSBCI~~-loans on a pro rata basis to each growth  
434 fund that was awarded less than the amount requested in an  
435 application. The department may award any remaining investment  
436 authority and ~~SSBCI~~-loans to new applicants.

437 (e) (1) On or after the seventh anniversary of the  
438 closing date, a growth fund may apply to the department to  
439 exit the program and no longer be subject to regulation except  
440 as set forth in subdivision (2). The application shall include  
441 a calculation of the follow-on percentage and the new jobs and  
442 retained jobs percentage. The department shall respond to the  
443 application within 30 days of receipt. In evaluating the  
444 application, the fact that the ~~SSBCI~~-loan has not been  
445 violated and that the growth fund has not received a notice of  
446 revocation that has not been cured under subsection (c) shall  
447 be sufficient evidence to prove that the growth fund is  
448 eligible for exit. The department may not unreasonably deny an



## SB315 INTRODUCED

449 application submitted under this subsection. If the  
450 application is denied, the notice shall include the reasons  
451 for the determination.

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

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

456 b. Second, to pay management fees unless prohibited  
457 under this section.

458 c. Third, to pay any principal and interest on the  
459 ~~SSBCI~~ loan not deemed to be forgiven pursuant to paragraph  
460 (24)b. of Section 40-9H-2.

461 d. Fourth, to make distributions to its equity  
462 holders."

463 "§40-9H-7

464 The department shall report to the Legislature  
465 beginning in ~~2023~~2026, pursuant to Section 40-1-50 and rules  
466 adopted by the Department of Revenue, providing an assessment  
467 of the incentives allowed in this chapter."

468 Section 2. Section 40-9H-9, Code of Alabama 1975,  
469 providing legislative intent for use of certain federal funds  
470 under the American Rescue Plan Act of 2021, is repealed.

471 Section 3. This act shall become effective on the first  
472 day of the third month following its passage and approval by  
473 the Governor, or its otherwise becoming law, but only shall  
474 become operative upon the appropriation by the Legislature of  
475 a minimum of twelve million five hundred thousand dollars  
476 (\$12,500,000) appropriated to the Alabama Rural, Agribusiness,



## SB315 INTRODUCED

477 and Opportunity Zone Jobs Act Account for the fiscal year  
478 2024-2025.