

1 HB224  
2 173948-3  
3 By Representative Garrett  
4 RFD: Ways and Means Education  
5 First Read: 11-FEB-16

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8 SYNOPSIS: This bill would create the Alabama Small  
9 Business Investment Company Act to attract capital  
10 to stimulate small business development by  
11 establishing tax credits for taxpayers that make  
12 eligible capital contributions to an eligible  
13 Alabama small business investment fund.

14 This bill would require the Department of  
15 Commerce to accept applications and make  
16 determinations regarding eligibility of a business  
17 entity as an Alabama small business investment  
18 fund.

19 This bill would specify the amount of tax  
20 credits that may be claimed for eligible capital  
21 contributions to an Alabama small business  
22 investment fund and would provide for the carrying  
23 forward of credits under certain conditions.

24 This bill would also provide procedures for  
25 the revocation of tax credits for ineligible  
26 contributions and would provide procedures for the  
27 exit from the program and would require each small

1 business investment fund to submit a report to the  
2 department detailing employment and financial  
3 information.

4  
5 A BILL  
6 TO BE ENTITLED  
7 AN ACT

8  
9 To establish the Alabama Small Business Investment  
10 Company Act; to provide for tax credits for taxpayers that  
11 make eligible capital contributions to an eligible Alabama  
12 small business investment fund; to require the Department of  
13 Commerce to accept applications for eligibility as an Alabama  
14 small business investment fund and to make determinations of  
15 eligibility; to specify the amount of tax credits that may be  
16 claimed for eligible contributions; to provide for the  
17 carrying forward of credits under certain conditions; to  
18 provide procedures for the revocation of tax credits for  
19 ineligible contributions; to provide procedures for the exit  
20 from the program; to require each small business investment  
21 fund to report to the department certain employment and  
22 financial information; to require the department to provide  
23 certain information regarding whether businesses satisfy  
24 certain criteria relating to instate activity prior to  
25 investments; to provide for determination fees; and to provide  
26 rulemaking authority.

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 Small Business Investment Company Act.

3           Section 2. The Legislature finds and declares the  
4 following:

5           (1) Alabama small businesses have found it difficult  
6 to attract capital necessary to make investments that would  
7 stimulate economic development activity and create new jobs  
8 for the citizens of the state. Consequently, in order to  
9 maintain competitiveness and ensure access to capital for  
10 small business, a need exists for Alabama to attract capital  
11 that promotes the retention and expansion of existing jobs,  
12 stimulates the creation of new jobs, attracts new business and  
13 industry to the state, and stimulates growth in small  
14 businesses that are prepared to make meaningful investments  
15 and foster job creation in Alabama.

16           (2) Through the establishment of this act, Alabama  
17 can take steps to attract capital to stimulate small business  
18 development, retain and attract new business and industry to  
19 the state, create well paying jobs, and stimulate growth in  
20 small businesses that are prepared to make impactful economic  
21 development investments.

22           Section 3. For the purposes of this act, the  
23 following terms shall have the following meanings:

24           (1) AFFILIATE. A person that directly, or  
25 indirectly, through one or more intermediaries, controls, is  
26 controlled by, or is under common control with another person.  
27 For the purposes of this subdivision, a person is "controlled

1 by" another person if the controlling person holds, directly  
2 or indirectly, the majority voting or ownership interest in  
3 the controlled person or has control over the day-to-day  
4 operations of the controlled person by contract or by law.

5 (2) ALABAMA BUSINESS CONCERN. An operating company  
6 that, at the time of the initial investment in the company by  
7 an Alabama small business investment fund, satisfies all of  
8 the following:

9 a. Has its principal business operations in this  
10 state or shall use the proceeds of the Alabama small business  
11 investment to establish principal business operations in this  
12 state.

13 b. Has fewer than 250 employees or not more than  
14 five million dollars (\$5,000,000) in net income for the  
15 preceding taxable year.

16 c. Is primarily engaged in manufacturing,  
17 processing, or assembling products, conducting research and  
18 development, or providing services.

19 d. Is not engaged in insurance, banking or lending,  
20 or the provision of professional services provided by  
21 accountants, attorneys, or physicians.

22 (3) ALABAMA SMALL BUSINESS INVESTMENT. Any capital  
23 or equity investment in an Alabama business concern or any  
24 loan to an Alabama business concern with an original maturity  
25 date at least two years after the date of issuance.

26 (4) ALABAMA SMALL BUSINESS INVESTMENT FUND. An  
27 entity approved by the department under Section 4.

1 (5) APPLICANT. An entity that applies to be an  
2 Alabama small business investment fund under Section 4.

3 (6) CLOSING DATE. The date on which an Alabama small  
4 business investment fund has collected all of the amounts  
5 specified by subdivisions (1) and (2) of subsection (f) of  
6 Section 4.

7 (7) CREDIT-ELIGIBLE CAPITAL CONTRIBUTION. An  
8 investment of cash by an insurance company subject to tax  
9 under Chapter 4A of Title 27, Code of Alabama 1975, in an  
10 Alabama small business investment fund that equals the amount  
11 specified by the department under subsection (e) of Section 4  
12 and includes the purchase of an equity interest in the Alabama  
13 small business investment fund or the purchase, at par value  
14 or premium, of a debt instrument that satisfies all of the  
15 following:

16 a. Has an original maturity date of at least five  
17 years after the date of issuance.

18 b. Has a repayment schedule that is not faster than  
19 a level principal amortization over five years.

20 c. Has no interest, distribution, or payment  
21 features tied to the Alabama small business investment fund's  
22 profitability or the success of the Alabama small business  
23 investments.

24 (8) DEPARTMENT. The Alabama Department of Commerce.

25 (9) OPERATING COMPANY. The term excludes any  
26 publicly traded business and any business that derives or  
27 projects to derive 15 percent or more of annual revenue from

1 the rental or sale of real property, except any business that  
2 is a special purpose entity principally owned by a principal  
3 user of that property formed solely for the purpose of  
4 renting, either directly or indirectly, or selling real  
5 property back to such principal user if such principal user  
6 does not derive 15 percent or more of its gross annual revenue  
7 from the rental or sale of real property, nor is a publicly  
8 traded business.

9 (10) PRINCIPAL BUSINESS OPERATIONS. A business in  
10 which at least 80 percent of the business' employees reside in  
11 this state, the individuals who receive 80 percent of the  
12 business' payroll reside in this state, or the business has  
13 agreed to use the proceeds of an Alabama small business  
14 investment fund investment to relocate at least 80 percent of  
15 its employees to this state or pay at least 80 percent of its  
16 payroll to individuals residing in this state.

17 Section 4. (a) Beginning October 1, 2016, the  
18 department shall accept applications for approval as an  
19 Alabama small business investment fund. The application shall  
20 include all of the following:

21 (1) The total credit-eligible capital contributions  
22 sought by the applicant.

23 (2) A copy of the applicant or an affiliate of the  
24 applicant's license as a rural business investment company  
25 under 7 U.S.C. § 2009cc or as a small business investment  
26 company under 15 U.S.C. §681.

1           (3) Evidence that as of the date the application is  
2 submitted, the applicant or affiliates of the applicant have  
3 invested more than one hundred fifty million dollars  
4 (\$150,000,000) in at least 20 operating companies with fewer  
5 than 250 employees at the time of investment.

6           (4) Evidence of satisfaction of either of the  
7 following:

8           a. As of the date the application is submitted, the  
9 applicant or affiliates of the applicant have invested more  
10 than twenty-five million dollars (\$25,000,000) in operating  
11 companies located in Alabama.

12           b. The applicant has an office located in Alabama  
13 with at least two principals or persons employed or engaged to  
14 manage the funds of the applicant with at least five years of  
15 experience making debt, private equity, or venture capital  
16 investments on behalf of or as an institutional or accredited  
17 investor in Alabama.

18           (5) In the event that the applicant or an affiliate  
19 of the applicant received an allocation of tax credits  
20 pursuant to Section 40-14B-1 et seq., Code of Alabama 1975,  
21 other than allocations pursuant to Section 40-14B-22, Code of  
22 Alabama 1975, evidence in the form of an official notice from  
23 the department or other evidence submitted to the department  
24 that the applicant or an affiliate of the applicant has  
25 invested a cumulative amount equal to 100 percent of the tax  
26 credits in qualified investments under that program.



1           (6) An estimate of the number of jobs that will be  
2           created or retained in this state as a result of the  
3           applicant's Alabama small business investments.

4           (7) A 10-year business plan that includes a revenue  
5           impact assessment for the applicant's proposed Alabama small  
6           business investments prepared by a nationally recognized  
7           third-party independent economic forecasting firm projecting  
8           state and local revenue under the applicant's business plan.

9           (8) A signed affidavit from each investor making a  
10          credit-eligible capital contribution on a form prescribed by  
11          the department which shall state the amount of the investor's  
12          credit-eligible capital contribution.

13          (9) A nonrefundable application fee of fifty  
14          thousand dollars (\$50,000) payable to the department.

15          (b) The department shall make an application  
16          determination within 30 days of receipt of the application in  
17          the order in which the applications are received. The  
18          department shall deem applications received on the same day as  
19          received simultaneously. Except as provided in subsection (d)  
20          of Section 6, the department shall approve allocations of  
21          credit-eligible capital contributions that result in the  
22          utilization of up to twelve million five hundred thousand  
23          dollars (\$12,500,000) of tax credits per year for eight years  
24          in accordance with subsection (b) of Section 5 for taxpayers  
25          that make credit-eligible capital contributions. If requests  
26          for credit-eligible capital contribution authority exceed this  
27          limitation, the department shall proportionally reduce the

1 credit-eligible capital contribution authority for each  
2 approved application as necessary to avoid exceeding the  
3 limit.

4 (c) The department shall deny an application  
5 submitted under subsection (a) under any of the following  
6 circumstances:

7 (1) The application fee is not paid in full.

8 (2) The applicant does not satisfy all the criteria  
9 described in subdivisions (2), (3), (4), or (5) of subsection  
10 (a).

11 (3) The revenue impact assessment submitted with the  
12 application does not demonstrate that the applicant's business  
13 plan will result in a positive economic impact on this state  
14 over a 10-year period that exceeds the cumulative amount of  
15 tax credits for which the applicant applied.

16 (4) The credit-eligible capital contributions  
17 described in affidavits submitted under subdivision (5) of  
18 subsection (a) do not equal the total credit-eligible capital  
19 contribution authority sought under the applicant's business  
20 plan.

21 (5) The department has already approved the maximum  
22 amount of credit-eligible capital contributions allowed under  
23 subsection (b).

24 (d) If the department denies an application, the  
25 applicant may provide additional information to the department  
26 to complete, clarify, or cure defects in the application  
27 identified by the department within 15 days of the notice of

1 denial. The department shall reconsider the application and  
2 make a determination within 15 days before approving any  
3 pending application submitted after the original submission  
4 date.

5 (e) The department shall not deny an application or  
6 reduce the requested credit-eligible capital contribution  
7 authority for reasons other than those described in  
8 subsections (b) and (c). Upon approval of an application, the  
9 department shall provide a written approval to the applicant  
10 as an Alabama small business investment fund specifying the  
11 amount of the applicant's credit-eligible capital contribution  
12 authority and the amount of tax credits awarded to each  
13 investor whose affidavit was included in the application  
14 specifying the amount of the investor's credit-eligible  
15 capital contribution.

16 (f) (1) After receiving the approval issued under  
17 subsection (e), an Alabama small business investment fund,  
18 within 60 days, shall collect both of the following:

19 a. The credit-eligible capital contributions from  
20 each investor equal to the amount of tax credits awarded to  
21 each investor under subsection (e).

22 b. Equity investments from affiliates of the Alabama  
23 small business investment fund, including employees, officers,  
24 and directors of such affiliates, equal to at least the  
25 greater of five hundred thousand dollars (\$500,000) and 10  
26 percent of the Alabama small business investment fund's  
27 credit-eligible capital contribution authority.

1           (2) Within 65 days, the Alabama small business  
2 investment fund shall send the department documentation  
3 sufficient to prove that it has collected the amounts set  
4 forth in this subsection.

5           (g) If the Alabama small business investment fund  
6 fails to fully comply with subsection (f), its approval shall  
7 lapse and the corresponding credit-eligible capital  
8 contributions under this section will not count toward the  
9 limits on total credit-eligible capital contributions  
10 prescribed by subsection (b). The department shall first award  
11 lapsed credit-eligible capital contribution authority pro rata  
12 to each Alabama small business investment fund that was  
13 awarded less than the requested credit-eligible capital  
14 contribution authority under subsection (b) which an Alabama  
15 small business investment fund may allocate to its investors  
16 in its discretion. The department may award any remaining  
17 credit-eligible contribution to new applicants.

18           Section 5. (a) There is hereby allowed a  
19 nonrefundable tax credit for taxpayers that make  
20 credit-eligible capital contributions to an Alabama small  
21 business investment fund in accordance with subsection (f) of  
22 Section 4. The credit may be claimed against the tax imposed  
23 under Chapter 4A of Title 27, Code of Alabama 1975. The credit  
24 may not be sold, transferred, or allocated to any other entity  
25 other than to an affiliate subject to the tax imposed under  
26 Chapter 4A of Title 27, Code of Alabama 1975. The Alabama  
27 small business investment fund shall notify the department of

1 any transfer of any tax credits to affiliates. Notwithstanding  
2 any provision of this section to the contrary, to the extent  
3 any credits are used against the tax imposed under Chapter 4A  
4 of Title 27, Code of Alabama 1975, the Department of Finance  
5 shall adopt rules to ensure that the credit would reduce the  
6 distribution for the Education Trust Fund in an amount equal  
7 to the credits used in any fiscal year. A taxpayer claiming a  
8 credit against state premium tax liability earned through a  
9 credit-eligible capital contribution is not required to pay  
10 any additional retaliatory tax levied by law as a result of  
11 claiming the credit.

12 (b) On the closing date, the taxpayer shall earn a  
13 vested credit equal to the amount of the taxpayer's  
14 credit-eligible capital contribution to the Alabama small  
15 business investment fund. The taxpayer may claim up to 12.5  
16 percent of the credit authorized under this section in any  
17 taxable year, beginning in the third full calendar year after  
18 the credit-eligible capital contribution, exclusive of amounts  
19 carried forward pursuant to subsection (c).

20 (c) If the amount of the credit for a taxable year  
21 exceeds the tax otherwise due for that year, the excess shall  
22 be carried forward to ensuing taxable years until fully used.

23 Section 6. (a) The department shall revoke tax  
24 credits issued under Section 4 if any of the following occur  
25 before the Alabama small business investment fund exits the  
26 program in accordance with subsection (e).

1           (1) The Alabama small business investment fund does  
2 not invest 50 percent of its credit-eligible capital  
3 contribution authority in Alabama small business investments  
4 within four years of the closing date.

5           (2) The Alabama small business investment fund,  
6 before exiting the program in accordance subsection (e), makes  
7 a distribution or payment other than the following:

8           a. A distribution of cash to one or more equity  
9 owners of the Alabama small business investment fund to fully  
10 or partially offset a projected increase in the owner's  
11 federal or state tax liability, including any penalties and  
12 interest, related to the owner's ownership, management, or  
13 operation of the Alabama small business investment fund.

14           b. A distribution of cash as payment of interest and  
15 principal on the debt of the Alabama small business investment  
16 fund.

17           c. A distribution of cash related to the reasonable  
18 costs and expenses of forming and syndicating an Alabama small  
19 business investment fund, including reasonable and necessary  
20 fees paid for professional services, including legal and  
21 accounting services.

22           d. An annual management fee up to two percent of the  
23 Alabama small business investment fund's credit-eligible  
24 capital contribution authority.

25           (3) The Alabama small business investment fund  
26 invests more than 15 percent of its credit-eligible capital  
27 contribution authority in the same Alabama business concern,

1 including amounts invested in affiliates of the Alabama  
2 business concern.

3 (b) Before revoking one or more tax credits under  
4 this section, the department shall notify the Alabama small  
5 business investment fund of the reasons for the pending  
6 revocation. An Alabama small business investment fund shall  
7 have 90 days from the date the notice was dispatched to  
8 correct the violations outlined in the notice to the  
9 satisfaction of the department and avoid revocation of the tax  
10 credits. The Alabama small business investment fund shall be  
11 charged five thousand dollars (\$5,000) a day for each day  
12 taken to correct the violations outlined in the notice.

13 (c) If the department revokes a tax credit under  
14 subdivision (a), the Department of Insurance shall make an  
15 assessment for the amount of the credit claimed by the tax  
16 credit holder before the tax credit was revoked.

17 (d) If tax credits are revoked under this section,  
18 the associated credit-eligible capital contribution authority  
19 does not count toward the limit on total credit-eligible  
20 capital contributions described in subsection (b) of Section  
21 4. The department shall first award reverted credit-eligible  
22 capital contribution authority pro rata to each Alabama small  
23 business investment fund that was awarded less than the  
24 requested credit-eligible capital contributions under  
25 subsection (b) of Section 4. The department may award any  
26 remaining credit-eligible capital contribution authority to  
27 new applicants.

1           (e) (1) Upon investing 100 percent of its  
2 credit-eligible capital contribution authority in Alabama  
3 small business investments, the department shall allow an  
4 Alabama small business investment fund to exit the program and  
5 no longer be subject to regulation under this act if no tax  
6 credits have been revoked with respect to the Alabama small  
7 business investment fund.

8           (2) The department shall not unreasonably deny an  
9 exit from the program and shall acknowledge a request to exit  
10 the program within 30 days. Upon exiting the program, the  
11 Alabama small business investment fund shall make the first  
12 two hundred fifty thousand dollars (\$250,000) of  
13 distributions, excluding the distributions set forth in  
14 paragraph (a) (2)a., to the department if the Alabama small  
15 business investment fund's Alabama small business investments  
16 enable the creation or retention of between 85 percent and 60  
17 percent of the jobs set forth in the Alabama small business  
18 investment fund's application and the first one million  
19 dollars (\$1,000,000) of distributions, excluding the  
20 distributions set forth in paragraph (a) (2)a. to the  
21 department if less than 60 percent of the jobs set forth in  
22 the Alabama small business investment fund's application are  
23 created or retained.

24           (3) In determining job creation and retention  
25 numbers for Alabama small businesses that receive Alabama  
26 small business investments from more than one Alabama small  
27 business investment fund, the department shall apportion such



1 jobs created or retained proportionally based on the amount  
2 invested by each Alabama small business investment fund absent  
3 an agreement among Alabama small business investment funds as  
4 to such apportionment.

5 (f) The department shall not revoke a tax credit due  
6 to any actions of an Alabama small business investment fund  
7 that occur after the date the department issues a confirmation  
8 to the Alabama small business investment fund pursuant to  
9 subdivision (b) (1) of Section 8 or acknowledges a fund's exit  
10 from the program under subsection (e). This subsection does  
11 not prohibit the department from revoking a tax credit due to  
12 the actions of an Alabama small business investment fund that  
13 occur between submission of the application to exit and the  
14 date the fund's application for exit is approved.

15 Section 7. (a) Each Alabama small business  
16 investment fund shall submit a report to the department on or  
17 before the last day of April of each year that includes all of  
18 the following:

19 (1) The Alabama small business investment fund's  
20 bank statements evidencing each Alabama small business  
21 investment.

22 (2) The name and location of each business receiving  
23 an Alabama small business investment, including evidence that  
24 the business qualified as an Alabama business concern at the  
25 time the investment was made and its North American Industry  
26 Classification System code.

1           (3) The number of employment positions created or  
2 retained as a result of the fund's Alabama small business  
3 investments as of the last day of the preceding calendar year.

4           (4) An audited financial statement of the Alabama  
5 small business investment fund.

6           (5) A description of the distributions made under  
7 subdivision (2) of subsection (a) of Section 6 in the previous  
8 year.

9           (6) Any other information reasonably requested by  
10 the department.

11           (b) The Alabama small business investment fund shall  
12 include an annual compliance fee of ten thousand dollars  
13 (\$10,000) to the department with submission of each annual  
14 report. The fee shall increase to one hundred thousand dollars  
15 (\$100,000) payable to the department for each annual report  
16 submitted after the tenth anniversary of the Alabama small  
17 business investment fund's closing date.

18           (c) The department shall summarize the information  
19 set forth in subdivisions (1) through (3) in the form of a  
20 report and shall provide the report to the Legislature by July  
21 1 of each year.

22           Section 8. (a) An Alabama small business investment  
23 fund, before making an investment in a business, may request  
24 from the department a written opinion as to whether the  
25 business in which it proposes to invest is an Alabama business  
26 concern. The department, not later than the 15th business day  
27 after the date of receipt of the request, shall notify the

1 Alabama small business investment fund of its determination.  
2 If the department fails to notify the Alabama small business  
3 investment fund of its determination within 15 business days,  
4 the business in which the Alabama small business investment  
5 fund proposes to invest shall be considered to be an Alabama  
6 business concern. An Alabama small business investment fund  
7 shall include a five hundred dollar (\$500) determination fee  
8 with each request.

9 (b) (1) Upon achieving the milestone set forth in  
10 subdivision (1) of subsection (a) of Section 6 and provided  
11 that the Alabama small business investment fund has not  
12 received a revocation notice that has not been cured, the  
13 department shall provide written confirmation to the Alabama  
14 small business investment fund that prior tax credits are not  
15 subject to recapture and future tax credits are not subject to  
16 forfeiture.

17 (2) The department may rely on the Alabama small  
18 business investment fund's most recent annual report,  
19 supplemental information provided by the Alabama small  
20 business investment fund and any other information reasonably  
21 requested by the department. A business that is classified as  
22 an Alabama business concern at the time of the first  
23 investment in the business by an Alabama small business  
24 investment fund shall remain classified as an Alabama business  
25 concern and may receive follow-on investments from any Alabama  
26 small business investment fund provided the business's  
27 principal business operations remain in this state.

1                   (c) The department shall administer this act and may  
2                   adopt rules as necessary for the implementation and  
3                   administration of this act in advance of receiving  
4                   applications under this act.

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