

1 HB475
2 198670-1
3 By Representative Garrett
4 RFD: Ways and Means Education
5 First Read: 18-APR-19

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8 SYNOPSIS: This bill would create the Alabama Rural and
9 Agribusiness Jobs Act to create a procedure for the
10 certification of growth funds and would authorize
11 the Department of Commerce to issue a tax credit
12 certificate to taxpayers who make investor
13 contributions to a certified growth fund.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to commerce; to establish the Alabama Rural
20 and Agribusiness Jobs Act; to establish a procedure for the
21 certification of growth funds, as defined; and to authorize
22 the issuance of tax credit certificates under certain
23 conditions.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. This act shall be known and may be cited
26 as the Alabama Rural and Agribusiness Jobs Act.

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

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

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

18 (3) CLOSING DATE. The date on which a growth fund
19 has collected all amounts specified by subsection (f) of
20 Section 3.

21 (4) DEPARTMENT. The Department of Commerce.

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

25 a. Has fewer than 200 employees.

26 b. Has its principal business operations in one or
27 more growth zones in the state.

1 c.1. Is engaged in North American Industry
2 Classification System codes 11, 21, 22, 23, 31 through 33, 48
3 through 49, 54, or 62 or, if not engaged in such industries,
4 the department decides that the investment will be beneficial
5 to the growth zone; or

6 2. Is an agribusiness as defined in this section.

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

9 (7) GROWTH INVESTMENT. Any capital or equity
10 investment in a growth business or any loan to a growth
11 business with a stated maturity at least one year after the
12 date of issuance.

13 (8) GROWTH ZONE. Either of the following:

14 a. All areas outside of census urban areas with a
15 population of greater than 50,000.

16 b. An Opportunity Zone, as defined by 26 U.S.C.
17 §1400Z-1.

18 (9) HIGH WAGE EMPLOYMENT POSITION. An employment
19 position that is filled, pays a wage of at least 100 percent
20 of the county average, and requires at least 35 hours of work
21 per week or any other period of time generally accepted by
22 custom, industry, or practice as full-time employment.

23 (10) INVESTMENT AUTHORITY. The amount stated on the
24 notice issued under subsection (e) of Section 3 certifying the
25 growth fund. At least 75 percent of a growth fund's investment
26 authority shall be comprised of investor contributions.

1 (11) INVESTOR CONTRIBUTION. An investment of cash by
2 a person with state premium tax liability in a growth fund
3 that equals the amount specified with respect to the person in
4 the department's approval of a growth fund's application
5 pursuant to subsection (e) of Section 3. The investment shall
6 purchase an equity interest in the growth fund or purchase, at
7 par value or premium, a debt instrument that has a maturity
8 date at least five years from the closing date and a repayment
9 schedule that is no faster than level principal amortization
10 over five years.

11 (12) JOBS RETAINED. The number of high wage
12 employment positions that existed before the initial growth
13 investment and for which the growth business's chief executive
14 officer or similar officer certifies that the high wage
15 employment position would have been eliminated but for the
16 initial growth investment. The retained jobs of a growth
17 business shall be calculated each year based on the monthly
18 average of high wage employment positions. The reported number
19 of retained jobs may not exceed the number reported on the
20 initial report required under Section 7.

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

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

26 2. If the preceding calendar year contains the
27 initial growth investment, the monthly average of high wage

1 employment positions for the months including and after the
2 initial growth investment and before the end of the preceding
3 calendar year.

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

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

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

21 (15) STATE PREMIUM TAX LIABILITY. Any liability
22 incurred by any entity under Section 27-4A-3 and Section
23 27-3-29, Code of Alabama 1975.

24 Section 3. (a) Beginning September 1, 2019, the
25 department shall accept applications for approval as a growth
26 fund on a form prescribed by the department. The application
27 shall include all of the following:

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

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

14 (3) Evidence that as of the date the application is
15 submitted, the applicant or affiliates of the applicant have
16 invested at least one hundred million dollars (\$100,000,000)
17 in non-public companies located in non-metropolitan counties,
18 as defined by the Office of Management and Budget within the
19 Office of the President of the United States, on the basis of
20 county or county-equivalent units.

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

24 (5) A business plan that includes a revenue impact
25 assessment projecting state and local tax revenue, as well as
26 reduced state expenditures, to be generated by the applicant's
27 proposed growth investments prepared by a nationally

1 recognized third-party independent economic forecasting firm
2 using a dynamic economic forecasting model that analyzes the
3 applicant's business plan over the 10 years following the date
4 the application is submitted to the department.

5 (6) A signed affidavit from each investor stating
6 the amount of investor contributions each taxpayer commits to
7 make.

8 (7) A non-refundable application fee of twenty
9 thousand dollars (\$20,000) payable to the department.

10 (b) Within 30 days after receipt of a completed
11 application containing the information set forth in subsection
12 (a), the department shall grant or deny the application. The
13 department shall deem applications received on the same day to
14 have been received simultaneously. The department shall
15 approve investment authority up to an amount that would allow
16 not more than fifteen million dollars (\$15,000,000) in tax
17 credits to be taken in any one year, excluding any credits
18 that are carried forward under subsection (c) of Section 4. If
19 requests for investment authority exceed this limitation, the
20 department shall proportionally reduce the investment
21 authority and the investor contributions for each approved
22 application as necessary to avoid exceeding the limit.

23 (c) The department shall deny an application if any
24 of the following are true:

25 (1) The application is incomplete.

26 (2) The applicant does not satisfy all the criteria
27 described in subdivisions (2) and (3) of subsection (a).

1 (3) The revenue impact assessment submitted under
2 subdivision (5) of subsection (a) does not demonstrate that
3 the applicant's business plan will result in a positive
4 economic impact on this state over a 10-year period that
5 exceeds the cumulative amount of tax credits that would be
6 issued to the applicant's investors.

7 (4) The investor contributions described in
8 affidavits submitted under subdivision (6) of subsection (a)
9 do not equal at least 75 percent of the total amount of
10 investment authority sought under the applicant's business
11 plan.

12 (5) The department has already approved the maximum
13 amount of investment authority and investor contributions
14 allowed under subsection (b).

15 (d) If the department denies an application, the
16 applicant may provide additional information to the department
17 to complete, clarify, or cure defects in the application
18 identified by the department, except for failure to comply
19 with subdivision (4) of subsection (c), within 15 days of the
20 notice of denial for reconsideration and determination. The
21 department shall review and reconsider the applications within
22 30 days and before approving any pending application submitted
23 after the original submission date of the reconsidered
24 application.

25 (e) The department shall not reduce the requested
26 investment authority or deny a growth fund application for
27 reasons other than those described in subsections (b) and (c).

1 Upon approval of an application, the department shall certify
2 the applicant as a growth fund, specifying the amount of the
3 applicant's investment authority, the investor contributions
4 required from each taxpayer that submitted an affidavit with
5 the growth fund's application, and the number of new annual
6 jobs and jobs retained that will be required of the growth
7 fund, as prorated, based on the investment authority awarded
8 to the growth fund.

9 (f) (1) Within 60 days of receiving the approval
10 issued under subsection (e), a growth fund shall collect all
11 investor contributions and collect additional investments of
12 cash that, when added to the investor contributions, at least
13 equal the growth fund's investment authority. Within 65 days
14 of receiving the approval issued under subsection (e), a
15 growth fund shall send to the department documentation
16 sufficient to prove that the amounts described in this
17 subsection have been collected. At least 10 percent of the
18 growth fund's investment authority must consist of equity
19 investments contributed directly or indirectly by affiliates
20 of the growth fund.

21 (2) Upon receipt of the documentation required by
22 subdivision (1), the department shall provide a tax credit
23 certificate to each taxpayer that made an investor
24 contribution in the amount of the taxpayer's investor
25 contribution.

26 (g) If the growth fund fails to fully comply with
27 subsection (f), the growth fund's certification shall lapse

1 and the corresponding investment authority and investor
2 contributions will not count toward the limits on the program
3 size prescribed by subsection (b). The department shall first
4 award lapsed investment authority on a pro rata basis to each
5 growth fund that was awarded less than the investment
6 authority for which it applied. A growth fund may allocate the
7 associated investor contribution authority to any taxpayer
8 with state premium tax liability. Any remaining investment
9 authority may be awarded by the department to new applicants.

10 Section 4. (a) Any taxpayer that makes an investor
11 contribution is vested with an earned credit against state
12 premium tax liability equal to the investor contribution.
13 Twenty percent of the earned credit, including the amounts
14 carried forward pursuant to subsection (c), may be used
15 beginning in the taxable year containing the third anniversary
16 of the closing date. A taxpayer claiming a credit against any
17 premium tax liability is not required to pay any additional
18 retaliatory tax under Section 27-3-29, Code of Alabama 1975,
19 as a result of claiming that credit.

20 (b) The credit is non-refundable and may not be
21 sold, transferred, or allocated to any other entity other than
22 an affiliate that was an affiliate at the time of the
23 submission of the investor's affidavit included in the growth
24 fund's application.

25 (c) The amount of the credit claimed by a taxpayer
26 shall not exceed the amount of the taxpayer's state premium
27 tax liability for the tax year for which the credit is

1 claimed. Any amount of tax credit that the entity does not
2 claim in a taxable year may be carried forward for use in
3 future taxable years for a period not to exceed 10 years.

4 (d) A taxpayer claiming a credit under this section
5 shall submit a copy of the tax credit certificate with the
6 taxpayer's return for each taxable year for which the credit
7 is claimed.

8 (e) Notwithstanding any provision of this act to the
9 contrary, to the extent any credits are used against the tax
10 imposed under Chapter 4A of Title 27, Code of Alabama 1975,
11 the Department of Finance shall adopt rules to ensure that the
12 credits would reduce the thirty million, nine hundred
13 ninety-three thousand, two hundred sixty-nine dollars
14 (\$30,993,269) distribution for the Education Trust Fund in an
15 amount equal to the credits used in any fiscal year.

16 Section 5. (a) The department shall revoke a tax
17 credit certificate issued under subdivision (2) of subsection
18 (f) of Section 3 if any of the following occur with respect to
19 a growth fund before a growth fund exits the program in
20 accordance with subsection (e):

21 (1) Within two years of the closing date, the growth
22 fund does not invest 100 percent of its investment authority
23 in growth investments in this state, including 50 percent of
24 its investment authority in agribusinesses, and maintain that
25 level of investment until the sixth anniversary of the closing
26 date.

1 (2) The growth fund, after satisfying subdivision
2 (1), fails to maintain growth investments equal to 100 percent
3 of its investment authority until the sixth anniversary of the
4 closing date. For the purposes of this subdivision, an
5 investment is maintained even if it is sold or repaid so long
6 as the growth fund reinvests an amount equal to the capital
7 returned or recovered from the original investment, exclusive
8 of any profits realized, in other growth investments in this
9 state within 12 months of the receipt of the capital. Amounts
10 received periodically by a growth fund shall be treated as
11 continuously invested in growth investments if the amounts are
12 reinvested in one or more growth investments by the end of the
13 following calendar year.

14 (3) The growth fund, before exiting the program in
15 accordance with subsection (e), makes a distribution or
16 payment that results in the growth fund having less than 100
17 percent of its investment authority invested in growth
18 investments in this state or available for investment in
19 growth investments and held in cash and other marketable
20 securities.

21 (4) The growth fund makes a growth investment in a
22 growth business that directly or indirectly through an
23 affiliate owns, has the right to acquire an ownership
24 interest, makes a loan to, or makes an investment in the
25 growth fund, an affiliate of the growth fund, or an investor
26 in the growth fund. This subdivision does not apply to
27 investments in publicly traded securities by a growth business

1 or an owner or affiliate of the growth business. For purposes
2 of this subdivision, a growth fund will not be considered an
3 affiliate of a growth business solely because of its growth
4 investment.

5 (b) The maximum amount of growth investments in a
6 growth business, including amounts invested in affiliates of
7 the growth business, that a growth fund may count towards its
8 satisfaction of the requirements of subdivisions (1) and (2)
9 of subsection (a) is the greater of five million dollars
10 (\$5,000,000) or 20 percent of its investment authority,
11 exclusive of repaid or redeemed growth investments.

12 (c) Before revoking tax credit certificates under
13 this section, the department shall notify the growth fund of
14 the reasons for the pending revocation. The growth fund shall
15 have 90 days from the date the notice was received to correct
16 any violation outlined in the notice to the satisfaction of
17 the department and avoid revocation of the tax credit
18 certificate.

19 (d) If tax credit certificates are revoked under
20 this section, the associated investment authority and investor
21 contributions shall not count toward the limit on total
22 investment authority and investor contributions described by
23 subsection (b) of Section 3. The department shall first award
24 reverted investment authority on a pro rata basis to each
25 growth fund that was awarded less than the requested
26 investment authority for which it applied, and the growth fund
27 may allocate the associated investor contribution authority to

1 any taxpayer with state premium tax liability. The department
2 may award any remaining investment authority to new
3 applicants.

4 (e) (1) On or after the seventh anniversary of the
5 closing date, a growth fund may apply to the department to
6 exit the program and no longer be subject to regulation except
7 as set forth in subdivision (2). The department shall respond
8 to the application within 30 days of receipt. In evaluating
9 the application, the fact that no tax credit certificates have
10 been revoked and that the growth fund has not received a
11 notice of revocation that has not been cured under subsection
12 (c) shall be sufficient evidence to prove that the growth fund
13 is eligible for exit. The department shall not unreasonably
14 deny an application submitted under this subsection. If the
15 application is denied, the notice shall include the reasons
16 for the determination.

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

26 (3) At any time the growth fund proposes to make a
27 distribution to its equity holders that, when added to all

1 previous distributions to its equity holders, would be in
2 excess of its investment authority, the growth fund shall
3 remit to the department, if applicable, a payment equal to the
4 product of the proposed distribution and a fraction, the
5 numerator of which is the aggregate number of new annual jobs
6 and jobs retained reported to the department under subsection
7 (a) of Section 7 and the denominator of which is the number of
8 new annual jobs and jobs retained set forth in the growth
9 fund's certification provided pursuant to subsection (e) of
10 Section 3. No payment shall be due if the aggregate number of
11 new annual jobs and jobs retained as of the date of the
12 proposed distribution equal or exceed the number of new annual
13 jobs and jobs retained required set forth in the growth fund's
14 certification provided pursuant to subsection (e) of Section
15 3.

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

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

1 Section 7. (a) Each growth fund shall submit a
2 report to the department on or before the fifth business day
3 after each anniversary of the closing date prior to its exit
4 from the program in accordance with subsection (e) of Section
5 5. The report shall provide documentation, if not previously
6 provided, as to each growth investment made by the growth fund
7 and include all of the following:

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

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

15 (3) The number of high wage employment positions at
16 each growth business on the date of the growth fund's initial
17 growth investment.

18 (4) The number of new annual jobs and jobs retained
19 at each growth business.

20 (5) The average annual salary of the positions
21 described in subdivision (3).

22 (6) The cumulative amount of growth investments made
23 in growth businesses.

24 (7) Any other information required by the
25 department.

26 (8) A five thousand dollar (\$5,000) annual fee.

1 (b) The growth fund is not required to provide
2 information with respect to growth investments that have been
3 redeemed or repaid as part of the annual report set forth in
4 subsection (a) but shall provide the information if available.

5 Section 8. (a) The department may adopt rules to
6 implement this act.

7 (b) The department shall issue all forms and notices
8 required by this act in accordance with the requirements of
9 this act.

10 Section 9. The department shall notify the
11 Department of Insurance of the name of any insurance company
12 allocated tax credits under this act and the amount of the
13 credits.

14 Section 10. The provisions of this act shall only
15 apply to tax years beginning on or after January 1, 2021.

16 Section 11. 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.