

1 HB600  
2 139594-2  
3 By Representative Moore (B)  
4 RFD: Financial Services  
5 First Read: 22-MAR-12



1 products; b. person making sales or providing services or  
2 goods to persons described in paragraph a.; c. persons engaged  
3 in research and development, including, but not limited to,  
4 scientific laboratories; d. not-for-profit entity doing  
5 business in the state; or e. other business, industry, or  
6 enterprise that will further the purposes of this act.

7 (4) ELIGIBLE SMALL BUSINESS. Any person engaged in  
8 one or more business enterprises in the state that satisfies  
9 one or more of the following requirements: a. is a for-profit  
10 enterprise that 1. has received ten million dollars  
11 (\$10,000,000) or less in annual gross income under generally  
12 accepted accounting principles for each of its last three  
13 fiscal years or lesser time period if it has been in existence  
14 less than three years; 2. has fewer than 500 employees as  
15 defined in 13 C.F.R. § 121.106; 3. has a net worth of two  
16 million dollars (\$2,000,000) or less; or 4. meets such other  
17 requirements as the authority shall determine from time to  
18 time if the authority finds and determines that person is in  
19 need of assistance of the authority; or b. is a not-for-profit  
20 entity granted tax-exempt status under 26 U.S.C.A § 501(c)(3)  
21 of the Internal Revenue Code and doing business in the state.

22 (5) FEDERAL ACT. The federal Small Business Jobs Act  
23 of 2010, Public Law 111-240, as amended from time to time.

24 (6) INTERNAL REVENUE CODE. The federal Internal  
25 Revenue Code of 1986, as amended.

26 (7) LENDER. Any federal or state-chartered bank,  
27 federal land bank, production credit association, bank for

1 cooperatives, federal or state-chartered savings institution,  
2 small business investment company, or any other financial  
3 institution qualified within the state to originate and  
4 service loans, including, but not limited to, banks, insurance  
5 companies, credit unions, investment banking, or brokerage  
6 companies and mortgage loan companies.

7 Section 2. (a) The Legislature finds and determines  
8 all of the following:

9 (1) There exists a need to assist small businesses  
10 in the state in helping obtain financing for new business or  
11 in the expansion of existing business in order to promote and  
12 develop economic development and to further the long-term  
13 economic development of the state.

14 (2) It is necessary to create a governmental body to  
15 help small businesses obtain financing by working with banks  
16 and other lenders to provide loans, guarantees, insurance, and  
17 other assistance to small businesses, thereby encouraging the  
18 investment of private capital in small businesses in this  
19 state. The creation of this governmental body to assist in  
20 these matters is essential to the economic development of the  
21 state. In making these determinations, the Legislature has  
22 considered and affirmatively expresses its policy to assist  
23 small businesses in Alabama.

24 (b) All of the foregoing are public purposes and the  
25 activities of the authority shall serve a public purpose by  
26 promoting industry, developing trade, and increasing  
27 employment opportunities for the benefit of the state.

1           (c) The Alabama Small Business Financing Authority  
2 is created, with such powers and duties as are set forth in  
3 this act. All powers, rights, and duties conferred upon the  
4 authority by this act or other provisions of law shall be  
5 exercised or implemented by the board.

6           (d) All federal funds received or receivable by  
7 ADECA as part of the U.S. Treasury's State Small Business  
8 Credit Initiative under the federal act are hereby transferred  
9 to the authority, subject to any requirements imposed by that  
10 program related to these transfers. If any provision of this  
11 act is inconsistent with the federal act on matters related to  
12 federal funds received or receivable by ADECA or the  
13 authority, the provisions of the federal act shall govern and  
14 control.

15           Section 3. (a) The board shall consist of the  
16 Director of ADECA, the Director of the Alabama Development  
17 Office, the State Treasurer, one community banker appointed by  
18 the Speaker of the House, one banker appointed by the  
19 President Pro Tempore of the Senate, and two members appointed  
20 by the Governor who shall have knowledge and experience in the  
21 management and operation of a small business sufficient to  
22 implement the purpose of this act. The board members shall  
23 elect a chair of the board. Appointments shall be for terms of  
24 four years, except that appointments to fill vacancies shall  
25 be made for the unexpired terms. No appointed members shall  
26 serve more than one term, except in the case of appointments  
27 to fill vacancies for unexpired terms. All members of the

1 board shall be residents of the state and shall have full  
2 voting privileges. The members of the board shall receive no  
3 salary but shall be paid travel and other expenses incurred to  
4 attend meetings or while otherwise engaged in the discharge of  
5 their duties in the same manner as state employees. Four  
6 members of the board shall constitute a quorum for the  
7 transaction of all business of the authority. Board meetings  
8 shall be held at the call of the chair or whenever four  
9 members so request. The board may promulgate and amend rules  
10 as necessary to provide for the furtherance of this act.

11 (b) The membership shall be inclusive and shall  
12 reflect the racial, gender, geographic, urban/rural, and  
13 economic diversity of the state.

14 Section 4. The Governor shall appoint the executive  
15 director of the authority. The executive director shall  
16 administer, manage, and direct the affairs and activities of  
17 the authority in accordance with the policies and under the  
18 control and direction of the board and the director of ADECA.  
19 Except as otherwise stated in this act, the executive director  
20 shall approve all accounts for allowable expenses for the  
21 authority or of any employee, consultant, or other person  
22 providing the services to the board, and for expenses  
23 incidental to the operation of the authority subject to  
24 approval of the director of ADECA. The executive director, as  
25 custodian, shall maintain all books, documents, and papers of  
26 the authority. The executive director may cause copies to be  
27 made of all minutes and other records and documents of the

1 authority. The executive director shall perform such other  
2 duties as prescribed by the board in carrying out the purposes  
3 of this act. The director of ADECA shall reassign or provide  
4 other staff to the authority as needed.

5 Section 5. The authority is granted all powers  
6 necessary or appropriate to carry out and effectuate its  
7 purposes including, but not limited to, the following powers  
8 to:

9 (1) Have perpetual existence as a public body  
10 corporate and as a political subdivision of the state.

11 (2) Adopt, amend, and repeal bylaws, rules and  
12 regulations not inconsistent with this act, to regulate its  
13 affairs, and to carry into effect the powers and the purposes  
14 of the authority and for the conduct of its business.

15 (3) Sue and be sued in its name.

16 (4) Have an official seal and alter it at will.

17 (5) Maintain an office at such place within the  
18 state as it may designate.

19 (6) Make and execute contracts and all other  
20 instruments necessary and convenient for the performance of  
21 its duties and the exercise of its powers under this act upon  
22 such terms and conditions it deems appropriate including  
23 documents related to guarantee indebtedness programs, loan  
24 guarantee programs, and loan participation programs as  
25 established by the authority.

1           (7) Employ office personnel, advisers, consultants,  
2 professionals, and agents as may be necessary in its judgment,  
3 and to fix their compensation.

4           (8) Procure insurance against any loss in connection  
5 with its property and other assets, including, but not limited  
6 to, loans in such amounts and from such insurers as it deems  
7 advisable.

8           (9) Procure insurance or guarantees from any public  
9 or private entities, including any department, agency, or  
10 instrumentality of the United States of America.

11           (10) Receive and accept from any source aid or  
12 contributions of money, property, labor, or other things of  
13 value to be held, used, and applied to carry out the purposes  
14 of this act, subject to any conditions upon which grants or  
15 contributions are made, including, but not limited to, gifts  
16 or grants from any department, agency, or instrumentality of  
17 the United States.

18           (11) Enter into agreements with any department,  
19 agency, or instrumentality of the United States or of the  
20 state and with lenders and enter into loans with contracting  
21 parties for the purpose of planning, regulating, and providing  
22 for the financing or assisting in the financing of any  
23 eligible small business or any project thereof.

24           (12) Enter into contracts or agreements with lenders  
25 for the servicing of loans or processing of loans, or both.

26           (13) Provide technical assistance to local  
27 industrial development authorities and to profit and nonprofit



1 entities in the development or operation by, or assistance to,  
2 persons engaged in eligible small businesses and distribute  
3 data and information concerning the encouragement and  
4 improvement of eligible small businesses in the state.

5 (14) Use any fund of the authority for any and all  
6 expenses to be paid by the authority including, but not  
7 limited to, all of the following:

8 a. Any and all expenses for administrative, legal,  
9 actuarial, and other services.

10 b. All costs, charges, fees, and expenses of the  
11 authority.

12 c. All expenses and costs relating to the  
13 guaranteeing, insuring, or procurement of guarantees,  
14 insurance, or other instruments providing credit or the  
15 enhancement of credit for eligible small businesses.

16 (15) Collect fees and charges the authority  
17 determines to be reasonable in connection with its loans,  
18 insurance, guarantees, commitments, and servicing thereof.

19 (16) Create and establish such funds and accounts as  
20 may be necessary or desirable for its purposes.

21 (17) Enter into agreements to authorize lenders to  
22 undertake loan decision and processing functions and  
23 responsibilities with respect to certain authority guaranteed  
24 loans without obtaining prior authority approval. Under such  
25 agreements, the authority will provide each lender credit  
26 authority equal to an amount determined by the authority, or  
27 an amount equal to the funds available for such guarantees,

1       whichever is less, for the period designated in an agreement  
2       between the authority and the lender. The lender's allocation  
3       of credit authority shall be increased only by written  
4       agreement of the authority and shall not be restored  
5       automatically by the receipt of payments on authority loans.

6               (18) Take any action necessary or convenient for the  
7       exercise of the powers and purposes granted by this act or  
8       reasonably implied from them.

9               Section 6. The authority may make, and undertake  
10       commitments to make, loans to and guarantees for lenders under  
11       terms and conditions requiring the proceeds thereof to be used  
12       by the lenders to make loans to eligible small businesses.  
13       Loan commitments, actual loans, or guarantees of such loans  
14       may be originated through and serviced by any such lender. As  
15       a condition to a lender's participating in the loan, the  
16       lender shall agree to do both of the following: (1) Comply  
17       with requirements established by the authority including  
18       requirements that are consistent with the federal act for  
19       funds received or receivable by ADECA or the authority  
20       pursuant to the federal act or programs thereunder, and (2)  
21       use the proceeds of the loan within a reasonable period of  
22       time to make loans to eligible small businesses, or finance  
23       the projects of eligible small businesses, in the state.

24               Section 7. Prior to carrying out the powers granted  
25       herein, the authority shall adopt rules governing its  
26       activities including, but not limited to, rules relating to  
27       all of the following:

1 (1) Procedures for the submission of requests or  
2 invitations and proposals for making loans to or guarantees in  
3 favor of lenders.

4 (2) The reinvestment by a lender of the proceeds, or  
5 an equivalent amount, from any loan to a lender in loans to  
6 provide financing for eligible business in the state.

7 (3) Assurances that the lender and the eligible  
8 business to be financed will satisfy terms and conditions of  
9 the federal act.

10 (4) Rates, fees, charges, and other terms and  
11 conditions for originating or servicing loans in order to  
12 protect against realization of an excessive financial return  
13 or benefit by the originator or servicer.

14 (5) The type and amount of collateral or security to  
15 be provided to assure repayment of loans to lenders made by  
16 the authority.

17 (6) The nature and amount of fees to be charged by  
18 the authority to provide for expenses and reserves of the  
19 authority.

20 (7) Any other appropriate matters related to the  
21 duties or exercise of the authority's powers.

22 Section 8. No loans or loan guarantees made by the  
23 authority under this act shall constitute a debt, liability,  
24 or general obligation of the state or any political  
25 subdivision thereof, other than the authority, or a pledge of  
26 the faith and credit of the state or any political subdivision  
27 thereof, other than the authority, but shall be payable solely

1 as provided by the authority. No member or officer of the  
2 board of the authority nor any person executing the loans or  
3 loan guarantees shall be liable personally on any loan or loan  
4 guarantees by reason of the issuance thereof. Each loan or  
5 loan guarantee made under this act shall contain on the face  
6 thereof a statement that neither the state, nor any other  
7 political subdivision thereof, shall be obligated to pay the  
8 same or the interest thereon or other costs incident thereto  
9 except from the revenue or money pledged by the authority and  
10 that neither the faith and credit nor the taxing power of the  
11 state or any political subdivision thereof is pledged to the  
12 payment of the principal of, or the interest on, such loan or  
13 loan guarantee.

14 Section 9. All expenses incurred by the authority in  
15 carrying out the provisions of this act shall be payable  
16 solely from funds provided under this act, and nothing in this  
17 act shall be construed to authorize the authority to incur  
18 indebtedness or liability on behalf of or payable by the state  
19 or any of its other political subdivisions.

20 Section 10. (a) There is created in the State  
21 Treasury a fund to be known as the Alabama Small Business  
22 Capital Access Fund. The fund shall be comprised of moneys  
23 allocated to the state by programs established by the federal  
24 act; all income from the investment of moneys held by the  
25 fund; and any other moneys designated for deposit to the fund  
26 from any source, public or private. Interest earned on moneys  
27 in the fund shall remain in the fund and be credited to it.

1 Any moneys remaining in the fund, including interest thereon,  
2 at the end of each fiscal year shall not revert to the general  
3 fund but shall remain in the fund. Moneys in the fund shall be  
4 used to provide loans, loan guarantees, loan loss reserves,  
5 and interest rate write downs. The fund shall be managed by  
6 ADECA and administered by the authority.

7 (b) The fund may be used as a special reserve fund  
8 to cover potential future losses from the loan portfolios of  
9 participating banks and other lenders. The authority may  
10 establish with one or more banks and other lenders one or more  
11 accounts or pools for the fund. The authority may require  
12 matching contributions to the fund by the lenders or the  
13 borrowers, or both, pursuant to established guidelines.

14 (c) The authority, or its designated agents, shall  
15 determine the qualifications, terms, and conditions for the  
16 use of the fund and the accounts thereof. In connection with  
17 applications for claims made against the fund, the authority  
18 may require the production of any document, instrument,  
19 certificate, legal opinion, or any other information it deems  
20 necessary or convenient. All claims made against the fund  
21 shall be approved by the authority.

22 Section 11. Nothing contained in this act shall be  
23 construed as a restriction or limitation upon any powers that  
24 the authority might otherwise have under any other law of the  
25 state, and this act supersedes all other laws in conflict  
26 herewith and is cumulative to such powers. Insofar as the  
27 provisions of this act are inconsistent with the provisions of

1 any other law, the provisions of this act shall be controlling  
2 and the powers conferred by this act shall be regarded as  
3 supplemental and additional to powers conferred by any other  
4 laws. The provisions of this act shall be liberally construed  
5 to accomplish the purposes of this act.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Financial Ser-  
vices..... . . . . 22-MAR-12

Read for the second time and placed  
on the calendar..... . . . . 05-APR-12

Read for the third time and passed  
as amended..... . . . . 26-APR-12

Yeas 95, Nays 0, Abstains 0

Greg Pappas  
Clerk