

1 HB252
2 189211-1
3 By Representatives Rowe, Sessions, Weaver, Treadaway,
4 Standridge, Fridy, South, Nordgren, Wilcox, Faust, Davis,
5 Shedd, Tuggle, Blackshear, Lee, Lovvorn, Bracy, Ledbetter,
6 Shiver, Faulkner, Hurst, Wood, Pettus, Ainsworth, Hanes and
7 Williams (JW)
8 RFD: Ways and Means Education
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8 SYNOPSIS: This bill would create the Alabama
9 Agribusiness and Rural Jobs Act to provide tax
10 credits for certain investors who invest in rural
11 growth funds established to promote rural business
12 or rural agribusiness, to be administered by the
13 Department of Commerce.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to economic development; to define terms;
20 to provide tax credits for certain investors who invest in
21 rural growth funds established to promote rural business or
22 rural agribusiness, to be administered by the Department of
23 Commerce; to provide an application process for the
24 certification of rural growth funds by the department; to
25 provide for the acceptance and denial of applications; to
26 provide for an application fee; to provide limitations for
27 investment authority and investor contributions; to require

1 revenue impact assessments; to require the department to issue
2 tax credit certificates under certain conditions; to provide
3 for tax credits against state tax liability with certain
4 limitations for investors; to provide for the revocation of
5 tax credit certificates; to provide for exit from the program
6 upon approval of the department; to provide reporting
7 requirements for rural growth funds; and to provide rulemaking
8 authority.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 Section 2. (a) For the purposes of this act, the
13 following words, terms, and phrases shall have the following
14 meanings:

15 (1) AFFILIATE. An entity that directly, or
16 indirectly through one or more intermediaries, controls, is
17 controlled by, or is under common control with another entity.
18 For the purposes of this subdivision, "controlled by" means
19 circumstances in which the controlling person holds, directly
20 or indirectly, the majority voting or ownership interest in
21 the controlled person or has control over the day-to-day
22 operations of the controlled person by contract or by law.

23 (2) CLOSING DATE. The date on which a rural growth
24 fund has collected all amounts specified by subsection (a) of
25 Section 4.

26 (3) DEPARTMENT. The Department of Commerce.

1 (4) INVESTMENT AUTHORITY. The amount stated on the
2 notice issued under subsection (e) of Section 3 certifying the
3 rural growth fund. At least 80 percent of a rural growth
4 fund's investment authority shall be comprised of an amount
5 equal to the authorized investor contributions.

6 (5) INVESTOR CONTRIBUTION. An investment of cash by
7 a person with state premium tax liability in a rural growth
8 fund that equals the amount specified on a tax credit
9 certificate issued by the department under subdivision (a)(2)
10 of Section 4. The investment shall purchase an equity interest
11 in the rural growth fund or purchase, at par value or premium,
12 a debt instrument that has a maturity date at least five years
13 from the closing date.

14 (6) PRINCIPAL BUSINESS OPERATIONS. Business that is
15 located at the place or places where at least 60 percent of
16 its employees work or where employees that are paid at least
17 60 percent of its payroll work. An out-of-state business that
18 has agreed to relocate employees using the proceeds of a rural
19 growth investment to establish its principal business
20 operations in a rural community in the state shall be deemed
21 to have its principal business operations in this new location
22 provided it satisfies this definition within 180 days after
23 receiving the rural growth investment, unless the department
24 agrees to a later date.

25 (7) RURAL AGRIBUSINESS. A rural business that earns
26 a majority of its revenues from either farming, forestry,
27 biotechnology, fisheries, or biofuels and the processing,

1 manufacturing, packaging, storage, distribution, marketing,
2 and sales of such products or commodities; or the design,
3 creation, manufacture, marketing, or sales of technology,
4 equipment, or supplies related to such businesses.

5 (8) RURAL AREA. Any area of the state outside of
6 census urban areas, as defined by the United States Census
7 Bureau, with a population greater than 50,000.

8 (9) RURAL BUSINESS. A business that, at the time of
9 the initial investment in the company by a rural growth fund,
10 satisfies all of the following:

11 a. Has fewer than 200 employees.

12 b. Has its principal business operations in one or
13 more rural areas in the state.

14 c. Is engaged in industries related to agribusiness,
15 manufacturing, plant sciences, services, or technology or, if
16 not engaged in such industries, the department determines that
17 the investment will be beneficial to the rural area and the
18 economic growth of the state.

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

22 (10) RURAL GROWTH FUND. An entity certified by the
23 department under subsection (e) of Section 3.

24 (11) RURAL GROWTH INVESTMENT. Any capital or equity
25 investment in a rural business or rural agribusiness or any
26 loan to a rural business or rural agribusiness with a stated
27 maturity at least one year after the date of issuance,

1 provided the chief executive officer or similar officer of the
2 rural business or rural agribusiness executes an affidavit
3 that the business sought and was denied similar financing from
4 a financial institution domiciled in the state.

5 (12) STATE PREMIUM TAX LIABILITY. Any liability
6 incurred by any entity under Chapter 4A of Title 27, Code of
7 Alabama 1975.

8 Section 3. (a) Beginning September 1, 2018, the
9 department shall accept applications for approval as a rural
10 growth fund on a form prescribed by the department. The
11 application shall include all of the following:

12 (1) The total investment authority sought by the
13 applicant under the business plan.

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

18 (3) Evidence that as of the date the application is
19 submitted, the applicant or affiliates of the applicant have
20 invested at least one hundred million dollars (\$100,000,000)
21 in nonpublic companies located in rural areas.

22 (4) An estimate of the number of jobs that will be
23 created or retained in this state because of the applicant's
24 rural growth investments.

25 (5) A business plan that includes a revenue impact
26 assessment projecting state and local tax revenue to be
27 generated by the applicant's proposed rural growth investments

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

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

9 (7) A nonrefundable application fee of fifteen
10 thousand dollars (\$15,000) payable to the department.

11 (b) Within 30 days after receipt of a completed
12 application containing the information set forth in subsection
13 (a), the department shall grant or deny the application. The
14 department shall deem applications received on the same day to
15 have been received simultaneously. The department shall not
16 approve more than one hundred million dollars (\$100,000,000)
17 in investment authority and not more than eighty million
18 dollars (\$80,000,000) in investor contributions under this
19 section. If requests for investment authority exceed this
20 limitation, the department shall proportionally reduce the
21 investment authority and the investor contributions for each
22 approved application as necessary to avoid exceeding the
23 limit.

24 (c) The department shall deny an application if any
25 of the following exist:

26 (1) The application is incomplete or the application
27 fee is not paid in full.

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

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

9 (4) The investor contributions described in
10 affidavits submitted under subdivision (6) of subsection (a)
11 do not equal at least 80 percent of the total amount of
12 investment authority sought under the applicant's business
13 plan.

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

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

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

1 and (c). Upon approval of an application, the department shall
2 certify the applicant as a rural growth fund specifying the
3 amount of the applicant's investment authority and the
4 investor contributions required from each taxpayer that
5 submitted an affidavit with the rural growth fund's
6 application.

7 Section 4. (a) (1) Within 60 days of receiving the
8 approval issued under subsection (e) of Section 3, a rural
9 growth fund shall collect all investor contributions and
10 collect additional investments of cash that, when added to the
11 investor contributions, at least equal the rural growth fund's
12 investment authority. Within 65 days of receiving the approval
13 issued under subsection (e) of Section 3, a rural growth fund
14 shall send to the department documentation sufficient to prove
15 that the amounts described in this subdivision have been
16 collected.

17 (2) Upon receipt of the documentation required by
18 subdivision (1), the department shall provide a tax credit
19 certificate to each taxpayer that made an investor
20 contribution in the amount of such taxpayer's investor
21 contribution.

22 (b) If the rural growth fund fails to fully comply
23 with subsection (a), the rural growth fund's certification
24 shall lapse and the corresponding investment authority and
25 investor contributions will not count toward the limits on the
26 program size prescribed by subsection (b) of Section 3. The
27 department shall first award lapsed investment authority pro

1 rata to each rural growth fund that was awarded less than the
2 investment authority for which it applied, and a rural growth
3 fund may allocate the associated investor contribution
4 authority to any taxpayer with state premium tax liability in
5 its discretion. Any remaining investment authority may be
6 awarded by the department to new applicants.

7 Section 5. (a) Any taxpayer that makes an investor
8 contribution is vested with an earned credit against state
9 premium tax liability equal to the investor contribution that
10 may be utilized 20 percent in each of the taxable years that
11 includes the second through sixth anniversaries of the closing
12 date, inclusive of amounts carried forward pursuant to
13 subsection (c). A taxpayer claiming a credit against state
14 premium tax liability earned through an investor contribution
15 is not required to pay any additional retaliatory tax levied
16 by law as a result of claiming the credit.

17 (b) The credit is nonrefundable and may not be sold,
18 transferred, or allocated to any other entity other than an
19 affiliate that had state premium tax liability at the time of
20 the submission of the investor's affidavit included in the
21 rural growth fund's application.

22 (c) The amount of the credit claimed by a taxpayer
23 shall not exceed the amount of the taxpayer's state premium
24 tax liability for the tax year for which the credit is
25 claimed. Any amount of tax credit that the entity does not
26 claim in a taxable year may be carried forward for use in

1 future taxable years for a period not to exceed 10 years from
2 the date of the first anniversary of the closing date.

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

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

15 Section 6. (a) The department shall revoke a tax
16 credit certificate issued under subsection (a) of Section 4 if
17 any of the following occur with respect to a rural growth fund
18 before a rural growth fund exits the program in accordance
19 with subsection (e):

20 (1) The rural growth fund does not invest 100
21 percent of its investment authority in rural growth
22 investments in this state of which at least 50 percent must be
23 rural agribusinesses within two years of the closing date.

24 (2) The rural growth fund, after satisfying
25 subdivision (1), fails to maintain rural growth investments
26 equal to 100 percent of its investment authority until the
27 seventh anniversary of the closing date. For the purposes of

1 this subdivision, an investment is maintained even if it is
2 sold or repaid so long as the rural growth fund reinvests an
3 amount equal to the capital returned or recovered from the
4 original investment, exclusive of any profits realized, in
5 other rural growth investments in this state within 12 months
6 of the receipt of such capital. Amounts received periodically
7 by a rural growth fund shall be treated as continuously
8 invested in rural growth investments if the amounts are
9 reinvested in one or more rural growth investments by the end
10 of the following calendar year. A rural growth fund is not
11 required to reinvest capital returned from rural growth
12 investments after the sixth anniversary of the closing date,
13 and such rural growth investments shall be considered held
14 continuously by the rural growth fund through the seventh
15 anniversary of the closing date.

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

23 (4) The rural growth fund makes a rural growth
24 investment in a rural business that directly or indirectly
25 through an affiliate owns, has the right to acquire an
26 ownership interest, makes a loan to, or makes an investment in
27 the rural growth fund, an affiliate of the rural growth fund,

1 or an investor in the rural growth fund. This subdivision does
2 not apply to investments in publicly traded securities by a
3 rural business or an owner or affiliate of such rural
4 business. For purposes of this subdivision, a rural growth
5 fund will not be considered an affiliate of a rural business
6 solely because of its rural growth investment.

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

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

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

1 allocate the associated investor contribution authority to any
2 taxpayer with state premium tax liability in its discretion.
3 The department may award any remaining investment authority to
4 new applicants.

5 (e) On or after the seventh anniversary of the
6 closing date, a rural growth fund may apply to the department
7 to exit the program and no longer be subject to regulation.
8 The department shall respond to the application within 30 days
9 of receipt. In evaluating the application, the fact that no
10 tax credit certificates have been revoked and that the rural
11 growth fund has not received a notice of revocation that has
12 not been cured under subsection (c) shall be sufficient
13 evidence to prove that the rural growth fund is eligible for
14 exit. The department shall not unreasonably deny an
15 application submitted under this subsection. Upon exiting the
16 program, the rural growth fund shall make the first two
17 hundred fifty thousand dollars (\$250,000) of distributions to
18 the department if the rural growth fund's rural growth
19 investments enable the creation or retention of between 85
20 percent and 60 percent of the jobs set forth in the rural
21 growth fund's application and the first one million dollars
22 (\$1,000,000) of distributions to the department if less than
23 60 percent of the jobs set forth in the rural growth fund's
24 application are created or retained.

25 (f) If the application is denied, the notice shall
26 include the reasons for the determination.

1 (g) The department shall not revoke a tax credit
2 certificate after the rural growth fund's exit from the
3 program.

4 Section 7. A rural growth fund, before making a
5 rural growth investment, may request from the department a
6 written opinion as to whether the business in which it
7 proposes to invest satisfies the definition of a rural
8 business. The department, not later than the fifteenth
9 business day after the date of receipt of the request, shall
10 notify the rural growth fund of its determination. If the
11 department fails to notify the rural growth fund by the
12 fifteenth business day of its determination, the business in
13 which the rural growth fund proposes to invest shall be
14 considered a rural business.

15 Section 8. (a) Each rural growth fund shall submit a
16 report to the department on or before the fifth business day
17 after the second anniversary of the closing date. The report
18 shall provide documentation as to each rural growth investment
19 and include all of the following:

20 (1) A bank statement evidencing each rural growth
21 investment.

22 (2) The name, location, and industry of each rural
23 business concern receiving a rural growth investment,
24 including either the determination letter set forth in Section
25 7 or evidence that the business qualified as a rural business
26 at the time the investment was made.

1 (3) The number of employment positions created or
2 retained because of the rural growth fund's rural growth
3 investments as of the last day of the preceding calendar year.

4 (4) An audited financial statement of the rural
5 growth fund.

6 (5) An annual compliance fee of one thousand dollars
7 (\$1,000).

8 (6) Any other information required by the
9 department.

10 (b) Thereafter, the rural growth fund will submit an
11 annual report to the department within 45 days of the
12 beginning of the calendar year during the compliance period.
13 The report shall include all of the following:

14 (1) The number of employment positions created or
15 retained because of the rural growth fund's rural growth
16 investments as of the last day of the preceding calendar year.

17 (2) The average annual salary of the positions
18 described in subdivision (1).

19 (3) Any other information required by the
20 department.

21 (c) The rural growth fund is not required to provide
22 the annual report set forth in subsection (b) for rural growth
23 investments that have been redeemed or repaid but shall
24 provide such information if available.

25 Section 9. (a) The department may adopt rules to
26 implement this act, including rules to ensure the program

1 shall be inclusive and reflect the racial, gender, geographic
2 and economic diversity of the state.

3 (b) The department shall issue all forms and notices
4 required by this act in accordance with this act.

5 Section 10. The department shall notify the
6 Department of Insurance of the name of any insurance company
7 allocated tax credits under this act and the amount of such
8 credits.

9 Section 11. The provisions of this act shall apply
10 only to tax returns or reports originally due on or after
11 January 1, 2018.

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