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3 HOUSE WAYS AND MEANS EDUCATION COMMITTEE SUBSTITUTE FOR HB475
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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; provided that with respect to any loan to a
13 growth business, the chief executive officer or similar
14 official of the growth business executes an affidavit that the
15 business sought and was denied similar financing from a
16 banking institution doing business in Alabama.

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

18 a. All areas outside of census urban areas with a
19 population of greater than 50,000.

20 b. An Opportunity Zone, as defined by 26 U.S.C.
21 §1400Z-1.

22 (9) HIGH WAGE EMPLOYMENT POSITION. An employment
23 position that is filled, pays a wage of at least 110 percent
24 of the county average, and requires at least 35 hours of work
25 per week or any other period of time generally accepted by
26 custom, industry, or practice as full-time employment.

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

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

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

25 (13) NEW ANNUAL JOBS. Except as provided in
26 paragraph c., the term means the difference between paragraphs
27 a. and b.

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

3 2. If the preceding calendar year contains the
4 initial growth investment, the monthly average of high wage
5 employment positions for the months including and after the
6 initial growth investment and before the end of the preceding
7 calendar year.

8 b. The number of high wage employment positions at
9 the growth business on the date of the initial growth
10 investment.

11 c. If the amount calculated in subparagraph 1 of
12 paragraph a. is less than zero, the new annual jobs amount is
13 equal to zero.

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

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

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

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

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

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 non-public companies located in non-metropolitan counties,
22 as defined by the Office of Management and Budget within the
23 Office of the President of the United States, on the basis of
24 county or county-equivalent units.

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

1 (5) A business plan that includes a revenue impact
2 assessment projecting state and local tax revenue, as well as
3 reduced state expenditures, to be generated by the applicant's
4 proposed growth investments prepared by a nationally
5 recognized third-party independent economic forecasting firm
6 using a dynamic economic forecasting model that analyzes the
7 applicant's business plan over the 10 years following the date
8 the application is submitted to the department.

9 (6) A signed affidavit from each investor stating
10 the amount of investor contributions each taxpayer commits to
11 make.

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

14 (b) Within 30 days after receipt of a completed
15 application containing the information set forth in subsection
16 (a), the department shall grant or deny the application. The
17 department shall deem applications received on the same day to
18 have been received simultaneously. The department shall
19 approve investment authority up to an amount that would allow
20 not more than seven million, five hundred thousand dollars
21 (\$7,500,000) in tax credits to be taken in any one year,
22 including any credits that are carried forward under
23 subsection (c) of Section 4. If requests for investment
24 authority exceed this limitation, the department shall
25 proportionally reduce the investment authority and the
26 investor contributions for each approved application as
27 necessary to avoid exceeding the limit.

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

3 (1) The application is incomplete.

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

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

12 (4) The investor contributions described in
13 affidavits submitted under subdivision (6) of subsection (a)
14 do not equal at least 75 percent of the total amount of
15 investment authority sought under the applicant's business
16 plan.

17 (5) The department has already approved the maximum
18 amount of investment authority and investor contributions
19 allowed under subsection (b).

20 (d) If the department denies an application, the
21 applicant may provide additional information to the department
22 to complete, clarify, or cure defects in the application
23 identified by the department, except for failure to comply
24 with subdivision (4) of subsection (c), within 15 days of the
25 notice of denial for reconsideration and determination. The
26 department shall review and reconsider the applications for
27 which additional information is provided within the 15-day

1 period within 30 days and, if approved, the application shall
2 be considered complete as of its original submission date.

3 (e) The department shall not reduce the requested
4 investment authority or deny a growth fund application for
5 reasons other than those described in subsections (b) and (c).
6 Upon approval of an application, the department shall certify
7 the applicant as a growth fund, specifying the amount of the
8 applicant's investment authority, the investor contributions
9 required from each taxpayer that submitted an affidavit with
10 the growth fund's application, and the number of new annual
11 jobs and jobs retained that will be required of the growth
12 fund, which shall match those projected in the growth fund's
13 application, prorated on the basis of the investment authority
14 awarded to the growth fund.

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

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

6 (g) If the growth fund fails to fully comply with
7 subsection (f), the growth fund's certification shall lapse
8 and the corresponding investment authority and investor
9 contributions will not count toward the limits on the program
10 size prescribed by subsection (b). The department shall first
11 award lapsed investment authority on a pro rata basis to each
12 growth fund that was awarded less than the investment
13 authority for which it applied. A growth fund may allocate the
14 associated investor contribution authority to any taxpayer
15 with state premium tax liability. Any remaining investment
16 authority may be awarded by the department to new applicants.

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

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

6 (c) The amount of the credit claimed by a taxpayer
7 shall not exceed the amount of the taxpayer's state premium
8 tax liability for the tax year for which the credit is
9 claimed. Any amount of tax credit that the entity does not
10 claim in a taxable year may be carried forward for use in
11 future taxable years for a period not to exceed 10 years.

12 (d) A taxpayer claiming a credit under this section
13 shall submit a copy of the tax credit certificate with the
14 taxpayer's return for each taxable year for which the credit
15 is claimed.

16 (e) Notwithstanding any provision of this act to the
17 contrary, to the extent any credits are used against the tax
18 imposed under Chapter 4A of Title 27, Code of Alabama 1975,
19 the Department of Finance shall adopt rules to ensure that the
20 credits would reduce the thirty million, nine hundred
21 ninety-three thousand, two hundred sixty-nine dollars
22 (\$30,993,269) distribution for the Education Trust Fund in an
23 amount equal to the credits used in any fiscal year.

24 Section 5. (a) The department shall revoke a tax
25 credit certificate issued under subdivision (2) of subsection
26 (f) of Section 3 if any of the following occur with respect to

1 a growth fund before a growth fund exits the program in
2 accordance with subsection (e):

3 (1) Within two years of the closing date, the growth
4 fund does not invest 100 percent of its investment authority
5 in growth investments in this state, including 50 percent of
6 its investment authority in agribusinesses, and maintain that
7 level of investment until the sixth anniversary of the closing
8 date.

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

22 (3) The growth fund, before exiting the program in
23 accordance with subsection (e), makes a distribution or
24 payment that results in the growth fund having less than 100
25 percent of its investment authority invested in growth
26 investments in this state or available for investment in

1 growth investments and held in cash and other marketable
2 securities.

3 (4) The growth fund makes a growth investment in a
4 growth business that directly or indirectly through an
5 affiliate owns, has the right to acquire an ownership
6 interest, makes a loan to, or makes an investment in the
7 growth fund, an affiliate of the growth fund, or an investor
8 in the growth fund. This subdivision does not apply to
9 investments in publicly traded securities by a growth business
10 or an owner or affiliate of the growth business. For purposes
11 of this subdivision, a growth fund will not be considered an
12 affiliate of a growth business solely because of its growth
13 investment.

14 (b) The maximum amount of growth investments in a
15 growth business, including amounts invested in affiliates of
16 the growth business, that a growth fund may count towards its
17 satisfaction of the requirements of subdivisions (1) and (2)
18 of subsection (a) is the greater of five million dollars
19 (\$5,000,000) or 20 percent of its investment authority,
20 exclusive of repaid or redeemed growth investments.

21 (c) Before revoking tax credit certificates under
22 this section, the department shall notify the growth fund of
23 the reasons for the pending revocation. The growth fund shall
24 have 90 days from the date the notice was received to correct
25 any violation outlined in the notice to the satisfaction of
26 the department and avoid revocation of the tax credit
27 certificate.

1 (d) If tax credit certificates are revoked under
2 this section, the associated investment authority and investor
3 contributions shall not count toward the limit on total
4 investment authority and investor contributions described by
5 subsection (b) of Section 3. The department shall first award
6 reverted investment authority on a pro rata basis to each
7 growth fund that was awarded less than the requested
8 investment authority for which it applied, and the growth fund
9 may allocate the associated investor contribution authority to
10 any taxpayer with state premium tax liability. The department
11 may award any remaining investment authority to new
12 applicants.

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

26 (2) A growth fund may not make distributions or pay
27 any fees to its equity holders even after its exit from the

1 program in accordance with subdivision (1) unless and until it
2 has made cumulative growth investments equal to at least 150
3 percent of its investment authority. If applicable, a growth
4 fund shall continue to report the amount of growth investments
5 made to the department annually until it has made growth
6 investments equal to at least 150 percent of its investment
7 authority.

8 (3) At any time the growth fund proposes to make a
9 distribution to its equity holders that, when added to all
10 previous distributions to its equity holders, would be in
11 excess of its investment authority, the growth fund shall
12 remit to the department, if applicable, a payment equal to the
13 product of the proposed distribution and a fraction, the
14 numerator of which is the number of new annual jobs and jobs
15 retained set forth in the growth fund's certification provided
16 pursuant to subsection (e) of Section 3 less the aggregate
17 number of new annual jobs and jobs retained reported to the
18 department under subsection (a) of Section 7 and the
19 denominator of which is the number of new annual jobs and jobs
20 retained set forth in the growth fund's certification provided
21 pursuant to subsection (e) of Section 3. No payment shall be
22 due if the aggregate number of new annual jobs and jobs
23 retained as of the date of the proposed distribution equal or
24 exceed the number of new annual jobs and jobs retained
25 required set forth in the growth fund's certification provided
26 pursuant to subsection (e) of Section 3.

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

3 Section 6. A growth fund, before making a growth
4 investment, may request from the department a written opinion
5 as to whether the business in which it proposes to invest
6 satisfies the definition of a growth business. The department,
7 not later than 15 business days after the date of receipt of
8 the request, shall notify the growth fund of its
9 determination. If the department fails to notify the growth
10 fund of its determination within 15 business days, the
11 business in which the growth fund proposes to invest shall be
12 considered a growth business. Each request for an opinion
13 shall be accompanied by a five hundred dollar (\$500) opinion
14 fee payable to the department.

15 Section 7. (a) Each growth fund shall submit a
16 report to the department on or before the fifth business day
17 after each anniversary of the closing date prior to its exit
18 from the program in accordance with subsection (e) of Section
19 5. The report shall provide documentation, as to each growth
20 investment made by the growth fund and include all of the
21 following:

22 (1) A bank statement evidencing each growth
23 investment.

24 (2) The name, location, and industry of each growth
25 business receiving a growth investment, including either the
26 determination letter set forth in Section 6 or evidence that

1 the business qualified as a growth business at the time the
2 investment was made.

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

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

8 (5) The average annual salary of the positions
9 described in subdivisions (3) and (4).

10 (6) The cumulative amount of growth investments made
11 in growth businesses.

12 (7) Financial statements for the preceding calendar
13 year audited by an independent certified public accounting
14 firm, which shall include an opinion of, or agreed upon
15 procedures letter issued by, the independent certified public
16 accounting firm as to the growth fund's compliance with the
17 requirements of the Alabama Rural and Agribusiness Jobs Act.

18 (8) Any other information required by the
19 department.

20 (9) A five thousand dollar (\$5,000) annual fee.

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

25 Section 8. (a) The department may adopt rules to
26 implement this act.

1 (b) The department shall issue all forms and notices
2 required by this act in accordance with the requirements of
3 this act.

4 Section 9. The department shall notify the
5 Department of Insurance of the name of any insurance company
6 allocated tax credits under this act and the amount of the
7 credits.

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

10 Section 11. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.