HB195

203895-3

By Representative Garrett

RFD: Ways and Means General Fund

First Read: 06-FEB-20
SYNOPSIS: This bill would create the Alabama Rural and Agribusiness Jobs Act to create a procedure for the certification of growth funds and would authorize the Department of Commerce to issue a tax credit certificate to taxpayers who make investor contributions to a certified growth fund to make capital accessible to rural, minority, and female owned businesses.

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. This act shall be known and may be cited as the Alabama Rural and Agribusiness Jobs Act.

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

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

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

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

(4) DEPARTMENT. The Department of Commerce.

(5) GROWTH BUSINESS. A business to which all of the following apply at the time of the initial investment in the company by a growth fund:
   a. Has fewer than 200 employees.
b. Has its principal business operations in one or more growth zones in the state.

c. Is any of the following:

1. Engaged in North American Industry Classification System codes 11, 21, 22, 23, 31 through 33, 48 through 49, 54, or 62 or, if not engaged in those industries, the department decides that the investment will be beneficial to the growth zone.

2. An agribusiness as defined in this section.

3. Is a minority or female owned business.

4. Is a rural hospital or health clinic.

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

(7) GROWTH INVESTMENT. Any capital or equity investment in a growth business or any loan to a growth business with a stated maturity at least one year after the date of issuance; provided that with respect to any loan to a growth business secured by accounts receivable, inventory, real estate, or other tangible property, the chief executive officer or similar official of the growth business executes an affidavit that the business sought and was denied similar financing from a banking institution doing business in this state.

(8) GROWTH ZONE. Either of the following:

a. A rural area of the state, which is defined as a targeted county or a jumpstart county under Section 40-18-376.1, Code of Alabama 1975.
b. A qualified opportunity zone, as defined by 26 U.S.C. § 1400Z-1.

(9) HIGH WAGE EMPLOYMENT POSITION. An employment position that is filled, pays a wage of at least 110 percent of the county average as noted in the most recent quarterly County Employment and Wages report by the Bureau of Labor Statistics of the United States Department of Labor, and requires at least 35 hours of work per week or any other period of time generally accepted by custom, industry, or practice as full-time employment.

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

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

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

(13) MINORITY OR FEMALE OWNED BUSINESS. A business that is more than 50 percent owned by one or more females or individuals of African-American, Asian, or Hispanic origin.

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

a.1. The monthly average of high wage employment positions for the preceding calendar year; or
2. If the preceding calendar year contains the initial growth investment, the monthly average of high wage employment positions for the months including and after the initial growth investment and before the end of the preceding calendar year.

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

c. If the amount calculated in subparagraph 1 of paragraph a. is less than zero, the new annual jobs amount is equal to zero.
(15) PRINCIPAL BUSINESS OPERATIONS. The place or places where at least 60 percent of the business's employees work or where employees that are paid at least 60 percent of the business's payroll work. A business that has agreed to relocate or hire new employees using the proceeds of a growth investment to establish its principal business operations in a growth zone in the state shall be deemed to have its principal business operations in this new location, provided the business satisfies this requirement within 180 days after receiving the growth investment, unless the department agrees to a later date.

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

Section 3. (a) Beginning September 1, 2020, the department shall accept applications for approval as a growth fund on a form prescribed by the department. The application shall include all of the following:

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

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

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

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

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

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

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

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

(1) The application is incomplete.

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

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

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

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

(d) If the department denies an application, the
applicant may provide additional information to the department
to complete, clarify, or cure defects in the application
identified by the department, except for failure to comply
with subdivision (4) of subsection (c), within 15 days of the
notice of denial for reconsideration and determination. The
department shall review and reconsider the applications for
which additional information is provided within the 15-day
period within 30 days and, if approved, the application shall
be considered complete as of its original submission date.

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

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

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

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

Section 4. (a) For tax years beginning on or after January 1, 2022, any taxpayer that makes an investor contribution is vested with an earned credit against state premium tax liability equal to the investor contribution. Twenty percent of the earned credit, including the amounts carried forward pursuant to subsection (c), may be used annually beginning in the taxable year containing the third anniversary of the closing date. A taxpayer claiming a credit against any premium tax liability is not required to pay any additional retaliatory tax under Section 27-3-29, Code of Alabama 1975, as a result of claiming that credit.

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

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

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

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

(1) Within two years of the closing date, the growth fund does not invest 100 percent of its investment authority in growth investments in this state, of which at least 25 percent shall be in agribusiness and at least 25 percent shall be in minority or female owned businesses, and at least 75 percent of its total investment authority invested in growth businesses located in rural areas, and maintain that level of investment until the sixth anniversary of the closing date.

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

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

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

(b) The maximum amount of growth investments in a growth business, including amounts invested in affiliates of the growth business, that a growth fund may count towards its satisfaction of the requirements of subdivisions (1) and (2) of subsection (a) is the greater of five million dollars ($5,000,000) or 20 percent of its investment authority, exclusive of repaid or redeemed growth investments.
(c) Before revoking tax credit certificates under this section, the department shall notify the growth fund of the reasons for the pending revocation. The growth fund shall have 90 days from the date the notice was received to correct any violation outlined in the notice to the satisfaction of the department and avoid revocation of the tax credit certificate.

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

(e)(1) On or after the seventh anniversary of the closing date, a growth fund may apply to the department to exit the program and no longer be subject to regulation except as set forth in subdivision (2). The department shall respond to the application within 30 days of receipt. In evaluating the application, the fact that no tax credit certificates have been revoked and that the growth fund has not received a notice of revocation that has not been cured under subsection
(c) shall be sufficient evidence to prove that the growth fund is eligible for exit. The department may not unreasonably deny an application submitted under this subsection. If the application is denied, the notice shall include the reasons for the determination. On or after an exit under this subsection, the state shall receive a 10 percent share of any distributions other than eligible distributions by the growth fund that made a growth investment, other than the amount necessary for a growth fund to repay principal and interest on its indebtedness.

(2) A growth fund may not make distributions or pay any fees to its equity holders even after its exit from the program in accordance with subdivision (1) unless and until it has made cumulative growth investments equal to at least 150 percent of its investment authority, with at least 25 percent of its cumulative growth investments in agribusiness and at least 25 percent of its cumulative growth investments in minority or female owned businesses in the state and at least 75 percent of its cumulative growth investments in growth businesses located in rural areas of the state. If applicable, a growth fund shall continue to report the amount of growth investments made to the department annually until it has made growth investments equal to at least 150 percent of its investment authority.

(3) At any time the growth fund proposes to make a distribution to its equity holders, the growth fund shall remit to the department, if applicable, a payment equal to the
product of the proposed distribution and a fraction, the
numerator of which is the number of new annual jobs and jobs
retained set forth in the growth fund's certification provided
pursuant to subsection (e) of Section 3 less the aggregate
number of new annual jobs and jobs retained reported to the
department under subsection (a) of Section 7 and the
denominator of which is the number of new annual jobs and jobs
retained set forth in the growth fund's certification provided
pursuant to subsection (e) of Section 3. No payment shall be
due if the aggregate number of new annual jobs and jobs
retained as of the date of the proposed distribution equal or
exceed the number of new annual jobs and jobs retained
required set forth in the growth fund's certification provided
pursuant to subsection (e) of Section 3.

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

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

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

(1) A bank statement evidencing each growth investment.

(2) The name, location, and industry of each growth business receiving a growth investment, including either the written opinion set forth in Section 6 or evidence that the business qualified as a growth business at the time the investment was made.

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

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

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

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

(7) Financial statements for the preceding calendar year audited by an independent certified public accounting
firm, which shall include an opinion of, or an agreed upon procedures letter issued by, the independent certified public accounting firm as to the growth fund's compliance with the requirements of this act.

(8) Any other information required by the department.

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

(b) The growth fund shall use best efforts to obtain and provide information with respect to growth investments that have been redeemed or repaid as part of the annual report set forth in subsection (a) and shall provide the information if available.

Section 8. (a) The department may adopt rules to implement and administer this act.

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

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

Section 10. This act shall only apply to tax years beginning on or after January 1, 2022.

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