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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2019	.	
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	.	

The Committee on Finance and Tax (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 288.062, Florida Statutes, is created to
read:

288.062 Florida Rural Jobs and Business Recovery Act.—

(1) This section may be cited as the "Florida Rural Jobs
and Business Recovery Act."

(2) The following terms when used in this section shall



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11 have the following meanings except where the context clearly
12 indicates a different meaning:

13 (a) "Affiliate" means an entity that directly, or
14 indirectly through one or more intermediaries, controls, is
15 controlled by, or is under common control with another entity.

16 For the purposes of this paragraph, an entity is "controlled by"
17 another entity if the controlling entity holds, directly or
18 indirectly, the majority voting or ownership interest in the
19 controlled entity or has control over the day-to-day operations
20 of the controlled entity.

21 (b) "Closing date" means the date on which a growth fund
22 has collected all amounts specified by paragraph (8) (a).

23 (c) "Department" means the Department of Economic
24 Opportunity.

25 (d) "Full-time high wage employment position" means an
26 employment position that is filled, pays a high wage and
27 requires at least 35 hours of work per week or any other period
28 of time generally accepted by custom, industry, or practice as
29 full-time employment.

30 (e) "Growth business" means a business that, at the time a
31 growth fund initially invests in the business:

32 1. Has fewer than 200 employees;

33 2. Has its principal business operations in at least one
34 growth zone in the state; and

35 3. Is engaged in North American Industry Classification
36 System sectors: 11, 21, 22, 23, 31-33, 48-49, 54, or 62.

37 However, if the business is not engaged in such industries, the
38 department shall determine whether the investment will create
39 new jobs or retain jobs.



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40 (f) "Growth fund" means an entity certified by the
41 department under subsection (7).

42 (g) "Growth investment" means any capital or equity
43 investment in a growth business or any loan to a growth business
44 with a stated maturity at least 1 year after the date of
45 issuance.

46 (h) "Growth zone" means:

47 1. All locations outside an urbanized area with a
48 population equal to or greater than 50,000, as identified by the
49 United States Census Bureau; or

50 2. Any urbanized area within a county designated by Federal
51 Emergency management Agency declaration FEMA-4399-DR if the
52 urbanized area had sustained winds in excess of 100 miles per
53 hour during Hurricane Michael.

54 (i) "High wage" means a wage in any county that is greater
55 than 100 percent of the county average.

56 (j) "Investment authority" means the amount certified by
57 the department under subsection (7). At least 75 percent of a
58 growth fund's investment authority must consist of investor
59 contributions.

60 (k) "Investor contribution" means a cash investment in a
61 growth fund by an entity that is subject to the state premium
62 tax under ss. 624.509 and 624.5091. The cash investment must
63 equal the amount specified for that entity in the department's
64 approval of a growth fund's application under subsection (4).
65 The cash investment shall purchase an equity interest in the
66 growth fund or purchase, at par value or premium, a debt
67 instrument that has a maturity date at least 5 years from the
68 closing date and a repayment schedule that is no greater than



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69 level principal amortization over 5 years.

70 (l) "Jobs retained" means the number of full-time high wage
71 employment positions that existed before the initial growth
72 investment in a growth business and for which the growth
73 business's chief executive officer or similar officer certifies
74 that the employment positions would have been eliminated but for
75 the initial growth investment.

76 (m) "New annual jobs" means the difference between:

77 1.a. The average monthly number of full-time high wage
78 employment positions at a growth business in the preceding
79 calendar year; or

80 b. If the initial growth investment occurred during the
81 preceding calendar year, the average monthly number of full-time
82 high wage employment positions for the months during which the
83 initial growth investment was made through the end of the
84 preceding calendar year; and

85 2. The number of full-time high wage employment positions
86 at the growth business on the date of the initial growth
87 investment.

88
89 If the resulting total is less than zero, the new annual jobs
90 amount is equal to zero.

91 (n) "Principal business operation" of a business is the
92 location or locations where at least 60 percent of the
93 business's employees work or where the employees who are paid at
94 least 60 percent of the business's payroll are located. A
95 business that agrees to relocate or hire new employees using the
96 proceeds of a growth investment to establish its principal
97 business operation in a growth zone in the state is deemed to



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98 have its principal business operations in the new location
99 provided it satisfies this definition within 180 days after
100 receiving the growth investment, unless the department agrees to
101 a later date.

102 (o) "State premium tax" means the tax identified in s.
103 624.509 or s. 624.5091.

104 (3) Beginning September 1, 2019, the department shall
105 accept applications for approval as a growth fund on a form
106 adopted by the department. The application shall include the
107 following:

108 (a) The total investment authority sought by the applicant.

109 (b) Evidence that:

110 1. The applicant or an affiliate of the applicant is
111 licensed as a rural business investment company under 7 U.S.C.
112 s. 2009cc or as a small business investment company under 15
113 U.S.C. s. 681. The applicant or the affiliate must include a
114 certificate executed by an executive officer of the applicant
115 attesting that such license remains in effect and has not been
116 revoked; and

117 2. At least one principal in a rural business investment
118 company or a small business investment company is, and has been
119 for at least 4 years, an officer or employee of the applicant or
120 an affiliate of the applicant on the date the application is
121 submitted.

122 (c) Evidence that as of the date the application is
123 submitted, the applicant or affiliates of the applicant have
124 invested at least \$100 million in nonpublic companies located in
125 nonmetropolitan counties as defined by the Office of Management
126 and Budget within the Office of the President of the United



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127 States on the basis of county or county-equivalent units.
128 (d) An estimate of the total number of new annual jobs that
129 will be created and jobs retained over the life of the program
130 in this state because of the applicant's growth investments.
131 (e) A business plan that includes a revenue impact
132 assessment projecting state and local tax revenues to be
133 generated, as well as state expenditures to be reduced, by the
134 applicant's proposed growth investments, prepared by a
135 nationally recognized third-party independent economic
136 forecasting firm using a dynamic economic forecasting model that
137 analyzes the applicant's business plan over the 10 years
138 following the date the application is submitted to the
139 department.
140 (f) A signed affidavit from each investor stating the
141 amount of investor contribution the investor will make.
142 (g) A commitment by the growth fund applicant to give first
143 priority to growth investments located in those counties
144 designated by Federal Emergency Management Agency declaration
145 FEMA-4399-DR.
146 (4) (a) Within 45 days after receipt of a completed
147 application containing the information set forth in subsection
148 (3), the department shall approve or deny the application.
149 (b) The department shall deem applications that are
150 received on the same day as having been received simultaneously.
151 (c) The department shall approve investment authority up to
152 an amount that would allow no more than \$5 million in tax
153 credits to be taken in any one year, excluding any credits that
154 are carried forward pursuant to paragraph (10) (c). No more than
155 a total of \$25 million in tax credits may be approved by the



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156 department under the program. If requests for investment
157 authority exceed this tax credit limitation, the department
158 shall proportionally reduce the investment authority and the
159 investor contributions for each approved application as
160 necessary to avoid exceeding the limit.

161 (5) The department shall deny an application if:

162 (a) The application is incomplete;

163 (b) The applicant does not satisfy the criteria set forth
164 in subsection (3);

165 (c) The revenue impact assessment submitted under paragraph
166 (3) (e) does not demonstrate that the applicant's business plan
167 will result in a positive revenue impact on this state over a
168 10-year period that exceeds the cumulative amount of tax credits
169 that would be issued to the applicant's investors;

170 (d) The investor contributions described in affidavits
171 submitted under paragraph (3) (f) do not equal at least 75
172 percent of the total amount of investment authority sought under
173 the applicant's business plan; or

174 (e) The department has already approved the maximum amount
175 of investment authority and investor contributions allowed under
176 subsection (4).

177 (6) If the department denies an application, the applicant,
178 within 15 days after the denial, may provide additional
179 information to the department to cure any defects in the
180 application identified by the department, except for failure to
181 comply with paragraph (5) (c), paragraph (5) (d), or paragraph
182 (5) (e). The department shall review and reconsider such
183 applications within 30 days after receipt and before approving
184 any pending applications submitted after the original submission



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185 date of the reconsidered application.

186 (7) The department shall not reduce the requested
187 investment authority or deny a growth fund application for
188 reasons other than those described in subsection (4) or
189 subsection (5). After the department approves an application, it
190 shall certify:

191 (a) The applicant as a growth fund;

192 (b) The amount of the applicant's investment authority;

193 (c) The investor contributions required from each investor
194 that submitted an affidavit with the growth fund's application;
195 and

196 (d) The number of new annual jobs and jobs retained that
197 will be required of the growth fund, as prorated, based on the
198 investment authority awarded to the growth fund.

199 (8) (a) Within 60 days after receiving the certification
200 issued under subsection (7), a growth fund shall collect all
201 investor contributions and collect additional investments of
202 cash that, when added to the investor contributions, at least
203 equal the growth fund's investment authority. Within 65 days
204 after receiving the certification issued under subsection (7), a
205 growth fund shall send to the department documentation that it
206 has collected the amounts described in this subsection. At least
207 10 percent of the growth fund's investment authority must
208 consist of equity investments contributed by affiliates of the
209 growth fund. The growth fund shall report to the department the
210 date on which the investor contributions and additional
211 investments of cash were collected.

212 (b) Upon receipt of the documentation required by paragraph
213 (a), the department shall provide a tax credit certificate to



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214 each taxpayer who has made an investor contribution in the
215 amount of the investor contribution.

216 (9) If the growth fund fails to fully comply with
217 subsection (8), the department shall revoke the growth fund's
218 certification and the corresponding investment authority and
219 investor contributions will not count toward the limits on the
220 program size set forth in subsection (4). The department shall
221 first award revoked investment authority pro rata to each growth
222 fund that was awarded less than the investment authority for
223 which it applied, and a growth fund may allocate the associated
224 investor contribution authority to any taxpayer with state
225 premium tax liability in its discretion. Any remaining
226 investment authority may be awarded by the department to new
227 applicants.

228 (10) (a) Any taxpayer that makes an investor contribution is
229 vested with an earned credit against state premium tax liability
230 equal to that investor's investor contribution. The credit may
231 be used over 5 years such that 20 percent of the credit is
232 applied in each of the taxable years that includes the year of
233 the closing date through the fourth anniversary of the closing
234 date, unless a specific request is made to carry them forward
235 for a period not to exceed 10 years.

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

241 (c) The amount of the credit claimed by a taxpayer may not
242 exceed the amount of such taxpayer's state premium tax liability



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243 for the tax year for which the credit is claimed.

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

247 (e) The credit shall be allowed after deducting from the
248 tax the deductions for assessments made pursuant to s. 440.51;
249 the credits for taxes paid under ss. 175.101 and 185.08; the
250 credits for income taxes paid under chapter 220; the credit
251 allowed under s. 624.509(5), as such credit is limited by s.
252 624.509(6); and the credit allowed under s. 624.51055.

253 (11) The department must revoke the tax credit certificates
254 issued under paragraph (8)(b) if any of the following occur with
255 respect to a growth fund before the growth fund exits the
256 program in accordance with paragraph (16)(a):

257 (a) The growth fund does not invest 100 percent of its
258 investment authority in growth investments in this state within
259 2 years of the closing date;

260 (b) The growth fund, after initially satisfying paragraph
261 (a), fails to maintain growth investments equal to 100 percent
262 of its investment authority until the sixth anniversary of the
263 closing date. For purposes of this paragraph, an investment is
264 "maintained" even if it is sold or repaid, so long as the growth
265 fund reinvests an amount equal to the capital returned or
266 recovered from the original investment, exclusive of any profits
267 realized, in other growth investments in this state within 12
268 months of the receipt of such capital. Amounts received
269 periodically by a growth fund shall be treated as continuously
270 invested in growth investments if the amounts are reinvested in
271 one or more growth investments by the end of the following



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272 calendar year;

273 (c) The growth fund, before exiting the program in
274 accordance with paragraph (16) (a), makes a distribution or
275 payment that results in the growth fund having less than 100
276 percent of its investment authority invested in growth

277 investments in this state or available for investment in growth
278 investments and held in cash and other marketable securities; or

279 (d) The growth fund invests in a growth business that
280 directly or indirectly through an affiliate owns, has the right
281 to acquire an ownership interest, makes a loan to, or makes an
282 investment in the growth fund, an affiliate of the growth fund,
283 or an investor in the growth fund. This paragraph does not apply
284 to investments in publicly traded securities by a growth
285 business or an owner or affiliate of such growth business. For
286 purposes of this paragraph, a growth fund is not considered an
287 affiliate of a growth business solely because of its growth
288 investment.

289 (12) Before making a growth investment, a growth fund may
290 request a written opinion from the department as to whether the
291 business in which it proposes to invest satisfies the definition
292 of a growth business. The department, not later than the 15th
293 business day after the date of receipt of the request, shall
294 provide the growth fund with a determination letter providing
295 its opinion. If the department fails to issue a determination
296 letter by the 15th business day, the business in which the
297 growth fund proposes to invest shall be considered a growth
298 business.

299 (13) The maximum amount of growth investments in a growth
300 business, including amounts invested in affiliates of the growth



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301 business, that a growth fund may count in satisfying the
302 requirements of paragraphs (11)(a) and (b) is the greater of \$5
303 million or 20 percent of its investment authority, exclusive of
304 repaid or redeemed growth investments.

305 (14) Before revoking a tax credit certificate under
306 subsection (11), the department shall notify the growth fund of
307 the reasons for the pending revocation. The growth fund shall
308 have 90 days from the date the notice was received to correct
309 any violation outlined in the notice to the satisfaction of the
310 department and avoid revocation of the tax credit certificate.

311 (15) If the department revokes any tax credit certificates
312 under subsection (11), the associated investment authority and
313 investor contributions will not count toward the limit on total
314 investment authority and investor contributions described in
315 subsection (4). The department may award any remaining
316 investment authority to new applicants.

317 (16)(a) On or after the seventh anniversary of the closing
318 date, a growth fund may apply to the department to exit the
319 program and no longer be subject to regulation except as set
320 forth in paragraph (b). The department shall approve or deny the
321 application within 30 days of receipt. In evaluating the
322 application, the fact that no tax credit certificates have been
323 revoked and that the growth fund has not received a notice of
324 revocation that has not been cured pursuant to subsection (14)
325 is sufficient evidence to prove that the growth fund is eligible
326 for exit. The department shall not unreasonably deny an
327 application submitted under this paragraph. If the application
328 is denied, the notice shall include the reasons for the
329 determination.



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330 (b) After its exit from the program in accordance with
331 paragraph (a), a growth fund may not make distributions or pay
332 any fees except as allowed under paragraph (11)(c) to its
333 investors unless it has made growth investments equal to at
334 least 150 percent of its investment authority. Each growth fund
335 shall continue to report the amount of growth investments made
336 to the department annually until it has made growth investments
337 equal to at least 150 percent of its investment authority.

338 (c) After its exit from the program in accordance with
339 paragraph (a), at any time the growth fund proposes to make a
340 distribution to its investors that, when added to all previous
341 distributions to its investors, exceeds its investment
342 authority, the growth fund shall remit to the department a
343 payment equal the product of the proposed distribution and the
344 difference between one and a fraction, the numerator of which is
345 the aggregate number of new annual jobs and jobs retained
346 reported to the department pursuant to subsection (18) and the
347 denominator of which is the number of new annual jobs and jobs
348 retained as set forth in the growth fund's certification. No
349 payment is due if the aggregate number of new annual jobs and
350 jobs retained as of the date of the proposed distribution equal
351 or exceed the number of new annual jobs and jobs retained as
352 projected set forth in the growth fund's certificate issued
353 under subsection (7).

354 (17) The department may not revoke a tax credit certificate
355 after a growth fund exits from the program.

356 (18)(a) Each growth fund shall submit an annual report to
357 the department on or before the 5th business day after each
358 anniversary of the closing date prior to its exit from the



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359 program in accordance with paragraph (16) (a). The report shall
360 identify each growth investment made by the growth fund and
361 shall include:

362 1. A bank statement evidencing each growth investment, if
363 not previously reported;

364 2. The name, location, and industry of each growth business
365 receiving a growth investment, including either the
366 determination letter set forth in subsection (12) or evidence
367 that the business qualified as a growth business at the time the
368 investment was made, if not previously reported;

369 3. The number of full-time high wage employment positions
370 at each growth business and jobs retained on the date of the
371 growth fund's initial growth investment;

372 4. The number of new annual jobs and jobs retained at each
373 growth business, provided the number of jobs retained may not
374 exceed the number of jobs retained, as reported in subsection
375 (3) and the number of jobs retained that must be reduced if the
376 full-time high wage employment positions reported drops below
377 the jobs retained as reported in subsection (3);

378 5. The average annual salary of the positions described in
379 paragraph (3) (d);

380 6. The cumulative amount of growth investments made in
381 growth businesses; and

382 7. Any other information required by the department.

383 (b) The growth fund is not required to provide information
384 with respect to growth investments that have been redeemed or
385 repaid as part of the annual report set forth in paragraph (a)
386 but shall provide such information if available.

387 (19) The department:



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388 (a) May adopt rules to implement the provisions of this
389 section.

390 (b) Shall adopt forms and notices to implement this
391 section.

392 (c) Shall notify the Department of Revenue of the name and
393 federal employer identification number of any insurance company
394 allocated tax credits under this act and the amount of such
395 credits.

396 (20) A growth fund that issues a growth investment approved
397 by the department shall be deemed a recipient of state financial
398 assistance under s. 215.97, the Florida Single Audit Act.
399 However, a growth fund business that receives a growth fund
400 investment is not a subrecipient for the purposes of s. 215.97.

401 (21) The provisions of this section apply only to tax
402 returns or reports originally due on or after January 1, 2020.

403 (22) This section expires on December 21, 2030.

404 Section 2. This act shall take effect July 1, 2019.

405
406 ===== T I T L E A M E N D M E N T =====

407 And the title is amended as follows:

408 Delete everything before the enacting clause
409 and insert:

410 A bill to be entitled
411 An act relating to rural communities; creating s.
412 288.062, F.S.; providing a short title; defining
413 terms; requiring the Department of Economic
414 Opportunity to accept applications for approval as
415 growth funds in a specified manner; specifying
416 information required to be submitted in an



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417 application; requiring the department to approve or
418 deny the applications within a specified timeframe;
419 prohibiting the department from approving more than a
420 certain amount of investment authority or investor
421 contributions; requiring the department to deny
422 applications under certain circumstances; authorizing
423 an applicant whose application was denied to provide
424 additional information within a certain timeframe to
425 cure defects in the application; prohibiting the
426 department from reducing the investment authority of
427 an application or denying an application unless
428 certain circumstances are met; requiring the
429 department to certify approved applications; requiring
430 the growth fund to collect contributions and
431 investments within a certain timeframe; requiring the
432 department to provide a tax credit certificate to
433 certain taxpayers; requiring the department to revoke
434 a growth fund's certification under specified
435 conditions; granting a credit against state premium
436 tax liability for specified investors; providing
437 restrictions on the credit; requiring that a taxpayer
438 claiming a credit submit a copy of the tax credit
439 certificate with his or her tax return; requiring the
440 department to revoke a tax credit certificate under
441 certain circumstances; authorizing a growth fund to
442 request certain determinations from the department;
443 providing a formula for calculating the maximum amount
444 of investments; specifying a timeframe within which a
445 growth fund may correct violations to avoid revocation



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446 of a tax credit certificate; requiring the department
447 to distribute reverted investment authority among
448 certain growth funds; authorizing the growth fund to
449 submit an exit application; providing procedures for
450 use by the department in handling exit applications;
451 prohibiting a growth fund that has exited the program
452 from making certain distributions or paying certain
453 fees under certain circumstances; requiring the growth
454 fund to remit certain payments to the department under
455 certain circumstances; requiring the growth fund to
456 submit a report to the department at a specified time;
457 prohibiting the department from revoking a growth
458 fund's tax credit certificate after it exits the
459 program; requiring the growth fund to submit an annual
460 report to the department; requiring that the annual
461 report include certain information; providing for
462 rulemaking; requiring the department to notify the
463 Department of Revenue of any insurance company that is
464 allocated tax credits; specifying that a growth fund
465 is deemed to be a recipient of state financial
466 assistance under certain circumstances; providing
467 applicability; providing for future expiration;
468 providing an effective date.