

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 298

INTRODUCER: Senator Montford

SUBJECT: Rural Businesses

DATE: February 8, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	<b>Pre-meeting</b>
2.			FT	
3.			AP	

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## I. Summary:

SB 298 creates s. 288.062, F.S., the Florida Rural Job and Business Recovery Act (Act or Program). The Act encourages investment in rural communities by allowing investors to earn state insurance premium tax credits equal to their investment in certified growth funds. In turn, the growth funds will invest in qualified growth businesses located in Florida's non-urbanized areas. The Act caps investment at a level that will result in no more than \$15 million in tax credits cumulatively claimed under the Program each year.

The Department of Economic Opportunity (Department or DEO) will administer the Act by certifying growth funds, granting tax credits to investors, and if necessary, revoking the fund's tax credits and authority.

The bill provides ongoing requirements for the growth funds to meet while participating in the Act, allows growth funds to reinvest their rural growth investments, and outlines steps for a growth fund to withdraw from the program.

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

## II. Present Situation:

The U.S. Census Bureau defines urban areas as urbanized areas of 50,000 or more population and urban clusters of at least 2,500 and less than 50,000 population.<sup>1</sup> The Census Bureau considers anything that is not an urban area to be rural.<sup>2</sup> Geographically, 86.2 percent of Florida's land lies in rural areas but only 8.8 percent of Florida's population lives those rural

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<sup>1</sup> U.S. Census Bureau, *Defining Rural at the U.S. Census Bureau: American Community Survey and Geography Brief*, 3 (Dec. 2016), available at [https://www2.census.gov/geo/pdfs/reference/ua/Defining\\_Rural.pdf](https://www2.census.gov/geo/pdfs/reference/ua/Defining_Rural.pdf) (last visited Feb. 8, 2019). 75 FR 53029 (2011).

<sup>2</sup> U.S. Census Bureau, *supra* note 1, at 1.

areas.<sup>3</sup> Higher population density in Florida's urban areas drives a more robust jobs market and overall economic development.<sup>4</sup>

## **Economic Development Incentives Targeted to Florida's Rural Communities**

### ***Rural Economic Development Initiative***

The Rural Economic Development Initiative (REDI) encourages and facilitates the location and expansion of economic development projects of significant scale in Florida's rural communities.<sup>5</sup> The REDI, which is administered by the DEO, coordinates the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.<sup>6</sup> In particular, the REDI acts in rural areas of opportunity<sup>7</sup> (RAO) to promote the location or expansion of businesses to the RAO to serve as economic generators.<sup>8</sup>

### ***Regional Rural Development Grant Program***<sup>9</sup>

The Regional Rural Development Grant Program provides matching grants to build the professional capacity of Florida's regional economic development organizations (EDO). Additionally, an EDO may use the program's grants to provide technical assistance to businesses within the rural counties and communities that it serves. A grant to an EDO is capped at \$50,000, or \$150,000 in a RAO, per year; the EDO must match the state's grant with non-state resources. The DEO administers the grant program through a contract with Enterprise Florida, Inc.<sup>10</sup> In fiscal year 2017-2018, the DEO allocated \$586,000 to EDOs.<sup>11,12</sup>

### ***Rural Infrastructure Fund***<sup>13</sup>

The Florida Rural Infrastructure Fund (Fund) facilitates the planning, preparation, and financing of traditional economic development or nature-based tourism infrastructure projects that encourage job creation and capital investment in rural communities. The DEO administers the Fund and may award grants or loans to local governments or businesses in its role as

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<sup>3</sup> Florida Legislature Office of Economic and Demographic Research, *Florida: An Economic Overview Focusing on County Differences*, 10 (Jan. 8, 2019), available at <http://edr.state.fl.us/Content/presentations/economic/EconomicOverviewFocusingonCounty%20Differences.pdf> (last visited Feb. 8, 2019).

<sup>4</sup> *Id.* at 8-13.

<sup>5</sup> Ch. 97-278, Laws of Fla.

<sup>6</sup> Sections 288.0656(3), (6)(a), F.S.

<sup>7</sup> Section 288.0656(1)(d), F.S., defines a "rural area of opportunity" as a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.

<sup>8</sup> Section 288.0656(7)(c), F.S.

<sup>9</sup> Section 288.018, F.S.

<sup>10</sup> Florida Dep't of Economic Opportunity, *Regional Rural Development Grants*, <http://www.floridajobs.org/community-planning-and-development/rural-community-programs/regional-rural-development-grants> (last visited Feb. 8, 2019).

<sup>11</sup> DEO may allocate up to \$750,000 from the Rural Community Development Revolving Loan Fund to the Regional Rural Development Grants Program. Section 288.018(4), F.S.

<sup>12</sup> Florida Dep't of Economic Opportunity, *2018 Incentives Report*, 19 (Dec. 28, 2018) (on file with the Senate Committee on Commerce and Tourism).

<sup>13</sup> Section 288.0655, F.S.

administrator. The amount awarded and required local government match requirements vary based on whether the project is located in a RAO, a catalyst site, or rural community.<sup>14</sup>

### **Federal Rural Business Investment Company and Small Business Investment Programs<sup>15,16</sup>**

Rural Business Investment Companies (RBIC) and Small Business Investment Companies (SBIC) are privately owned and managed investment funds that are licensed and regulated by the U.S. Department of Agriculture and Rural Development<sup>17</sup> and Small Business Administration (SBA)<sup>18</sup> respectively, that make capital investments in small businesses located in rural communities or other qualifying businesses.

An RBIC or SBIC program offers incentives for private capital to invest in small businesses, startups, low-income areas, or regions otherwise under economic distress. These programs often include special criteria for a certain quantity of the credit to focus on rural or underdeveloped areas.

### **Economic Development Incentives that use Tax Credits**

#### ***Rural Job Tax Credit Program<sup>19</sup>***

The Florida Rural Job Tax Credit Program offers a tax credit incentive to eligible businesses that are located within a designated qualified rural area to create new jobs. The tax credit ranges from \$1,000 to \$1,500 per qualified employee and can be taken against either the businesses' corporate income tax or sales and use tax liabilities. A business is limited to no more than \$500,000 of tax credits per year. The DEO administers this program, and may approve up to \$5 million in tax credits per year; in 2018, the DEO approved \$229,000 in rural job tax credits.<sup>20</sup>

#### ***Florida New Markets Development Program<sup>21</sup>***

The Florida New Markets Development Program (NMDP), similarly to the Program created in this bill, uses tax credits to spur economic development. The NMDP allows Florida taxpayers to earn tax credits against corporate income tax and insurance premium tax by investing in qualified community development entities (CDEs) that make investments in qualified low-income community businesses. CDEs are domestic corporations or partnerships that have a primary role in administering the tax credit program and act as intermediaries between the investors, financiers, and low-income community businesses. The NMDP is modeled after the Federal New

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<sup>14</sup> Florida Dep't of Economic Opportunity, *Rural Infrastructure Fund*, <http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund> (last visited Feb. 8, 2019).

<sup>15</sup> 7 C.F.R. s. 4290 et seq. (2009).

<sup>16</sup> 15 U.S.C. s. 681-688.

<sup>17</sup> United States Department of Agriculture and Rural Development, *Rural Business Investment Program*, <https://www.rd.usda.gov/programs-services/rural-business-investment-program> (last visited Feb. 8, 2019).

<sup>18</sup> U.S. Small Business Administration, *Become an SBIC*, <https://www.sba.gov/partners/sbics/apply-be-sbic> (last visited Feb. 8, 2019).

<sup>19</sup> Section 212.098, F.S.

<sup>20</sup> Florida Dep't of Economic Opportunity, *2018 Incentives Report*, 20 (Dec. 28, 2018) (on file with the Senate Committee on Commerce and Tourism).

<sup>21</sup> Sections 288.991-.9922, F.S.

Markets Tax Credit program.<sup>22</sup> The NMDP is capped at a cumulative investment that would result in no more than \$216.34 million in tax credits, and an annual investment that would result in no more than \$36.6 million in a single fiscal year.<sup>23</sup>

### **Examples of Similar Rural Jobs Acts in Other States**

Utah passed a substantially similar bill, the Utah Rural Jobs Act, which authorizes up to \$42 million in tax credits, and caps the total contributions one entity may make under the program at \$24.36 million. Additionally, Utah assesses a \$50,000 annual fee that is split between all the certified growth fund entities.<sup>24</sup>

In 2017, Georgia created the Georgia Agribusiness and Rural Jobs Act, which is designed to spur \$100 million in capital investments in rural businesses in the state. Investors may redeem up to \$15 million in tax credits annually for four years (for a total of \$60 million tax credits) against their corporate income tax and premium tax liabilities.<sup>25</sup>

Similar legislation has been proposed in several other states, including Washington. Additionally, New Markets Tax Credit Programs, which are structurally similar to the Act, are active in several other states, including Florida.<sup>26</sup>

### **III. Effect of Proposed Changes:**

The bill creates s. 288.062, F.S., the “Florida Rural Job and Business Recovery Act.” The Act presents incentives in the form of tax credits against the state insurance premium tax for investors to give funds to certified growth fund entities that, in turn, will make capital or equity investments, or loans with a maturity date of at least 1 year, in growth businesses located in non-urbanized areas of the state. The Act caps investment at a level that will result in no more than \$15 million in tax credits claimed under the program each year.

A growth business is one that:

- Has fewer than 200 employees
- Has its principal place of business operations in an area of Florida that is defined as not urbanized by the U.S. Census Bureau; and
- Participates in approved agribusiness; mining, oil, and gas extraction; utilities and construction; manufacturing; transportation and warehousing; professional scientific or technical services; healthcare and social assistance; or any industry determined to be beneficial to the area.

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<sup>22</sup> Florida Legislature Office of Economic and Demographic Research, *Economic Evaluation for Select State Economic Development Incentive Programs*, 32-36 (Mar. 2017), available at <http://edr.state.fl.us/content/returnoninvestment/ROISELECTPROGRAMS2017final.pdf> (last visited Feb. 8, 2019).

<sup>23</sup> Section 288.9914(3)(c), F.S.

<sup>24</sup> Utah Code Annotated s. 63N-4-301, et seq. (2017).

<sup>25</sup> Ga. Code Annotated s. 33-1-25, et seq. (2017).

<sup>26</sup> Doug Farquhar, *Jump-Starting Rural Economies* (Apr. 2018), <http://www.ncsl.org/research/environment-and-natural-resources/jump-starting-rural-economies.aspx> (last visited Feb. 8, 2019).

The DEO will administer the Act and monitor jobs created or retained as a result of the growth fund entities' investments in growth businesses.

### **Tax Credit Application, Approval, and Allocation**

Beginning September 1, 2019, the DEO must accept applications for approval as a growth fund. The application must include the following:

- Total investment authority sought by the applicant;
- A copy of the applicant's or an affiliate of the applicant's license as a rural business investment company or small business investment company, as defined in federal law;<sup>27</sup>
- Evidence that the applicant or its affiliates have invested at least \$100 million in private companies that are located in nonmetropolitan counties;
- An estimate of the total jobs that will be created and retained in the state as a result of the applicant's growth investments;
- A business plan that includes a 10-year revenue impact estimate of the proposed growth investments, including the investment's effect on state and local tax revenues, and state expenditures. This business plan must be prepared by an independent third-party economic forecasting firm that uses a dynamic economic forecasting model; and
- A signed affidavit from the applicant's investors stating the investment each commits to make.

The DEO must grant or deny an application within 30 days of its receipt. The DEO must deny an application if:

- The application is incomplete;
- The business plan does not evince that the growth investments will be greater than the amount of tax credits that would be issued to the applicant's investors;
- The growth fund has failed to commit investor contributions equal to at least 75 percent of the investment authority it seeks; or
- The DEO has already approved the investment authority permitted.

If the DEO denies an application on certain grounds, the applicant has 15 days to cure the defect. The DEO must review the additional filing and issue an ultimate decision within 30 days of the application's initial submission. Additionally, the DEO may not approve or deny an application that is submitted after another, even if the first application requires additional time to amend its submissions.

Upon approval of an application, the DEO must provide a notice to the applicant that certifies it as a growth fund, states the fund's investment authority, and specifies the investor contributions required. Ten percent of the fund's investment authority must consist of equity investments contributed by the fund's affiliates.

The DEO may not reduce the growth fund's investment authority from that requested on its application unless such an allocation would cause the DEO to exceed the year's permitted tax credits. If the DEO approves applications received on the same day that seek investment authorities that would collectively exceed the permitted annual tax credits, the DEO must

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<sup>27</sup> See notes 15-18, *supra*.

approve both applicants, but proportionally reduce each applicant's investment authority and investor contributions to comply with the tax credit limit.

Within 60 days of its certification, a growth fund must collect all of its committed investor contributions and any additional cash investments. The fund must provide proof to the DEO that it collected all required contributions and investments within 65 days of certification. A fund's certification will lapse if it fails to perform these duties.

The DEO must provide tax credit certificates to investors upon notice from a certified fund that it collected the investor's contribution.

### **Tax Credit Established**

An investor in a fund is vested with an earned credit against its state premium tax liability equal to the value of its contribution to the fund. The investor may not sell, transfer, or allocate the credit to any entity other than an affiliate of the fund.

An investor may claim 20 percent of its credit each taxable year from the second through sixth year after its investment, exclusive of amounts carried forward. If an investor's annual tax credit portion exceeds its state premium tax liability for the year, the investor may carry forward the excess for up to 10 years after its initial forgone use. In order to claim a credit, the investor must submit a copy of the tax credit certificate with its tax return for each taxable year it claims the credit.

The DEO must notify the Department of Revenue (DOR) the name of an insurance company that is allocated tax credits under the Act and the amount of credit given.

### **Revocation of Tax Credit Certificates and Exit From the Program**

The DEO must revoke a tax credit certificate if:

- The fund does not invest 100 percent of its investment authority in state growth investments within 2 years after the closing date;
- The fund fails to maintain investments equal to 100 percent of its investment authority until the sixth anniversary of its closing date (with a permitted 12 months between receipt of capital and reinvestment of that capital);
- The fund makes a distribution or payment that results in the fund having less than 100 percent of its investment authority invested in Florida growth investments, or available for State growth investments and held in cash or other securities;
- The fund invests more than \$5 million or 20 percent of its investment authority in a 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 fund, an affiliate of the fund, or an investor of the fund.

The DEO must give a growth fund notice of a pending revocation and an opportunity to cure. If tax credits are revoked, the DEO must re-allocate the investment authority and investor contributions on a pro rata basis to each fund that was awarded less than its requested investment authority, and any balance to new applicants.

On or after the seventh anniversary of the closing date, a growth fund may apply to the DEO to exit the program. The DEO must approve the request within 30 days if no tax credit certificates issued to the fund's investors have been revoked, and the fund's certification has not been revoked or is not currently subject to revocation.

The DEO may not revoke a tax credit certificate after a fund exits the program.

### **Growth Fund's Reporting Obligations**

Each fund must submit an annual report to the DEO on or before the fifth business day after each anniversary of its closing date. The report must include:

- A bank statement evidencing each of the fund's investments;
- The name, location, and industry of each growth business that receives a growth investment;
- Evidence that a growth business qualified as such at the time the fund made the investment;
- The number of employment positions at the growth business on the date of the fund's initial investment;
- The number of new and retained annual jobs and their average salary at each growth business;
- The cumulative amount of growth investments made in the growth business;
- Any other information required by the DEO; and
- If available, a report on redeemed or repaid growth investments.

### **Distributions to the Growth Fund's Equity Holders**

If a growth fund seeks to pay its equity holders an amount greater than its investment authority, the fund must also make a payment to the DEO equal to the proposed distribution multiplied by a fraction of which the numerator is the number of new and retained annual jobs reported in the fund's annual report and the denominator of which is the projected number of new and retained annual jobs reported on the fund's application. Therefore, if the fund exceeds its projected job development, it will make a smaller payment to the DEO; if it underperforms, the payment will be greater.

Additionally, after it exits the program, the fund may not make a payment to its equity holders unless it has invested at least 150 percent of its investment authority in growth investments. The fund must annually report its growth investments to the DEO until it has made the required growth investments.

### **Miscellaneous**

A fund may request the DEO to issue a written opinion advising whether a potential investment business qualifies as a growth business; if the DEO does not respond within 15 days of the request, the business is deemed a growth business.

The bill grants the DEO rulemaking authority to implement this program.

The bill provides an effective date of October 1, 2019.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

## B. Private Sector Impact:

Businesses in non-urbanized areas may be able to access funding that would not have otherwise been available to them through traditional financing institutions, e.g., bank loans. However, these investments will still likely have fees and interest attached to them.

A certified growth fund will likely see a positive financial impact as the result of its activity under the program. Similarly, growth fund investors will see a positive impact on their tax liabilities as a result of their use of tax credits issued under the program.

## C. Government Sector Impact:

The DEO may incur administrative costs to implement the program.

The Department of Revenue reports that it will be required to modify the Unified Tax (SUNTAX) System and other necessary updates. The total estimated cost of these updates is \$82,618.<sup>28</sup>

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<sup>28</sup> Florida Dep't of Revenue, *SB 298 Agency Analysis*, 5-6 (Jan. 24, 2019) (on file with the Senate Committee on Commerce and Tourism).



## VI. Technical Deficiencies:

The proposed section 288.062(3)(a), F.S., requires an applicant for certification as a growth fund to state the total investment authority it seeks and a potential investor's "investor contribution" commitment. However, the bill defines both "investment authority" and "investor contribution" as an amount specified on the certification notice issued by the DEO after the application is approved. It would be clearer to define these terms independent of the DEO's judgment.

The bill refers to the "United States Bureau of the Census." The name should be the U.S. Census Bureau.

The DEO must issue an initial determination within 30 days of its receipt of an application for certification. The proposed language also requires the DEO to grant an applicant 15 days to cure an insufficient application, but still requires that the DEO issue an ultimate decision regarding an insufficient application within 30 days of its initial submission. The bill could be amended to allow the DEO time to give notice of insufficient applications, receive responses, and then process those responses.

In order to process the tax credit, the DOR requires an investor's federal identification number and the investment's closing date. The bill only requires the DEO to provide the DOR with the investor's name and the amount of the tax credit that it certified.<sup>29</sup> Additionally, the bill could provide for notice to the DOR if a program tax credit lapses, or is revoked by the DEO.

## VII. Related Issues:

It appears that tax credits may be re-issued after the initial round of tax credits have been exhausted. Therefore, the Legislature may wish to include an expiration date for the program.<sup>30</sup> Alternatively, the Legislature may wish to consider a cap on the total amount of tax credits that may be claimed during the program's existence.<sup>31</sup>

A growth zone is defined as an area that is not defined as an urbanized area by the Census Bureau. The Census Bureau defines urbanized areas as separate than urban clusters and rural areas. It therefore appears that both an urban cluster and rural area are eligible for investment from a growth fund under the bill.

Pursuant to s. 288.062(3)(g)1, F.S., a growth fund's closing date is defined as the date on which the fund completes its collection of contributions and investments. Section 288.062(3)(g)1, F.S., neither requires a fund to complete a collection of contributions, nor to officially establish the date on which it did so. This may result in confusion when establishing a fund's closing date and calculating the date after which its investors may collect their tax credits. It may be clearer to

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<sup>29</sup> Florida Dep't of Revenue, *SB 298 Agency Analysis*, 4 (Jan. 24, 2019)(on file with the Senate Committee on Commerce and Tourism).

<sup>30</sup> *See, e.g.*, s. 288.9922, F.S.

<sup>31</sup> *See, e.g.*, s. 288.9914(3)(c), F.S., which places a cap of \$216.34 million in tax credits that may be claimed under the Florida New Markets Development Program Act; *see also*, Ga. Code Ann., s. 33-1-25(2017), which places a \$100 million cap on total tax credits used by the Georgia Agribusiness and Rural Jobs Act.

define the closing date as the date on which the fund provides notice to the department that it has collected sufficient contributions and investment, as required in s. 288.062(3)(g)2, F.S.

The bill proposes to vest an investor who has made an investor contribution with a right to a tax credit against the investor's state premium tax liability. A situation could arise wherein an investor makes its committed contribution, but the fund in which it invests fails to remain certified. Although the investor will not have a tax credit certificate at this point, it is unclear how the investor's vested right would be affected by a lapse in, or revocation of, certification.

It is unclear if s. 288.062(5)(a)3, F.S., which requires 100 percent investment, supersedes s. 288.062(5)(a)2, F.S., which allows for less than 100 percent invested in growth businesses.

Section 288.062(5)(a)2, F.S., is unclear whether a fund is required to be 100 percent invested in growth businesses or their affiliates for the entire time between years three and seven.

It appears that the DEO has the burden to prove that a tax credit certificate should be revoked. However, what standard of proof the Department must meet is unclear.

Section 288.062(8), F.S., requires the growth fund to submit an annual report to the DEO. However, the DEO has little power to audit or verify these reports. The Legislature may wish to empower the DEO to conduct examinations of or audit the growth funds to verify their compliance with the Act.<sup>32</sup>

#### **VIII. Statutes Affected:**

This bill creates section 288.062 of the Florida Statutes.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

##### **B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>32</sup> See, e.g., s. 288.9919, F.S.