

By Senator Montford

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1 A bill to be entitled
2 An act relating to rural businesses; creating s.
3 288.062, F.S.; providing a short title; defining
4 terms; requiring the Department of Economic
5 Opportunity to accept applications for certification
6 as a growth fund beginning on a specified date;
7 providing requirements for the application; requiring
8 the department to grant or deny the application within
9 a specified timeframe; limiting the amount of
10 investment authority that may be approved by the
11 department; requiring the department to deny
12 applications that do not meet certain requirements;
13 authorizing an applicant whose application was denied
14 to provide additional information to the department
15 within a specified timeframe; requiring the department
16 to reconsider an application for which additional
17 information has been submitted and to approve or deny
18 it within a certain timeframe; prohibiting the
19 department from reducing the investment authority of
20 an application or denying an application for reasons
21 other than those specified; requiring the department
22 to certify approved applicants as growth funds and to
23 specify their required investment authority and
24 investor contributions; requiring that the growth
25 fund's investment authority consist of a certain
26 percentage of equity investments; requiring the growth
27 fund to collect contributions and investments and
28 submit required documentation to the department within
29 a specified timeframe; requiring the department to

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30 issue tax credit certificates as appropriate;
31 providing circumstances under which a growth fund's
32 certification lapses; requiring the department to
33 redistribute lapsed investment authority in a
34 specified manner; providing that an investor who makes
35 an investor contribution is vested with a credit
36 against state premium tax liability; imposing
37 restrictions on the use of the credit; providing for
38 the carryover of tax credits; requiring that investors
39 claiming a credit submit a copy of the tax credit
40 certificate with their tax returns; requiring the
41 department to revoke tax credit certificates under
42 specified circumstances; capping the amount of
43 investments which growth funds can count toward
44 satisfaction of certain requirements; requiring the
45 department to notify growth funds of reasons for a
46 pending revocation of a tax credit certificate;
47 requiring growth funds to address issues identified in
48 the notice within a specified timeframe; providing
49 that reverted investment authority and investor
50 contributions do not count toward the limit on total
51 investment authority and investor contributions;
52 requiring the department to distribute reverted
53 investment authority to certain growth funds;
54 authorizing growth funds to submit an exit application
55 after a specified period of time; requiring the
56 department to respond to an exit application within a
57 certain timeframe; prohibiting the department from
58 unreasonably denying an exit application; requiring

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59 that denial notices state the reasons for denial;
60 prohibiting growth funds that have exited the program
61 from making distributions to their equity holders
62 unless they have made certain growth investments;
63 requiring such growth funds to continue to annually
64 report the amount of their growth investments until
65 required investments are made; providing a formula for
66 determining the amount a growth fund must pay the
67 department when making certain distributions;
68 prohibiting the department from revoking the growth
69 fund's tax credit certificate after the growth fund
70 has exited the program; authorizing growth funds to
71 request a written opinion from the department as to
72 whether a business qualifies as a growth business;
73 requiring that the department notify the growth fund
74 of its determination within a specified timeframe and
75 granting growth business status to the business if the
76 department fails to timely make its determination;
77 specifying that out-of-state businesses relocating
78 employees to this state must satisfy a specific
79 definition within a certain timeframe before a new
80 principal place of business operations is recognized;
81 requiring growth funds to submit annual reports to the
82 department; requiring that the reports provide certain
83 documentation; authorizing rulemaking; requiring the
84 department to provide certain notification to the
85 Department of Revenue; providing applicability;
86 providing an effective date.
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88 Be It Enacted by the Legislature of the State of Florida:

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

92 288.062 Florida Rural Job and Business Recovery Act.-

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

95 (2) As used in this section, the term:

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

99 For purposes of this paragraph, an entity is controlled by
100 another entity if the controlling entity directly or indirectly
101 holds the majority voting or ownership interest in the
102 controlled entity or has control over the day-to-day operations
103 of the controlled entity by contract or law.

104 (b) "Closing date" means the date on which a growth fund
105 completes the collection of all contributions and investments as
106 required in subparagraph (3)(g)1.

107 (c) "Department" means the Department of Economic
108 Opportunity.

109 (d) "Growth business" means a business that, at the time of
110 the initial investment in the company by a growth fund:

111 1. Has fewer than 200 employees;

112 2. Has its principal place of business operations in one or
113 more growth zones in the state; and

114 3.a. Is engaged in an industry classified under the North
115 American Industry Classification System, as published in 2017 by
116 the Office of Management and Budget, Executive Office of the

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117 President, as sector 11, 21, 22, 23, 31-33, 48-49, 54, or 62; or

118 b. If not engaged in an industry sector identified in sub-
119 subparagraph a., the department has determined, in light of the
120 investment, will be beneficial to the growth zone.

121 (e) "Growth fund" means an entity certified by the
122 department pursuant to paragraph (3) (f).

123 (f) "Growth investment" means any capital investment or
124 equity investment in a growth business or any loan to a growth
125 business with a stated maturity at least 1 year after the date
126 of issuance.

127 (g) "Growth zone" means all areas that are not an urbanized
128 area as defined by the United States Bureau of the Census.

129 (h) "High wage" means a wage that is at least equal to the
130 county average.

131 (i) "Investment authority" means the amount stated on the
132 certification notice issued pursuant to paragraph (3) (f)
133 certifying the growth fund.

134 (j) "Investor contribution" means an investment of cash, in
135 the amount specified by the department in its approval of the
136 growth fund's certification application, in a growth fund by a
137 person with a state premium tax liability in exchange for:

- 138 1. An equity interest in the growth fund, or
- 139 2. A debt instrument, at par value or premium, which has a
140 maturity date at least 5 years after the closing date and a
141 repayment schedule that does not exceed level principal
142 amortization over 5 years.

143 (k) "Jobs retained" means the number of employment
144 positions that existed before the initial growth investment at a
145 growth business, that pay a high wage, and that require at least

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146 35 hours of work each week which the growth business's chief
147 executive officer or similar officer certifies as being
148 positions that would have been eliminated but for the initial
149 growth investment.

150 (1) "New annual jobs" means the difference between:

151 1.a. The monthly average of employment positions at a
152 growth business which pay a high wage and require at least 35
153 hours of work each week for the preceding calendar year; or

154 b. If the initial growth investment occurred during the
155 preceding calendar year, the monthly average of employment
156 positions at a growth business which pay a high wage and require
157 at least 35 hours of work each week for the month in which the
158 initial growth investment was made and the succeeding months
159 before the end of that calendar year; and

160 2. The number of full-time high-wage employment positions
161 at the growth business on the date of the initial growth
162 investment.

163 (m) "Principal place of business operations" means the
164 place or places at which business operations are located and at
165 which:

166 1. At least 60 percent of the business's employees work, or
167 2. Employees that are paid at least 60 percent of the
168 business's payroll work.

169 (n) "State premium tax liability" means any liability
170 incurred by any entity under s. 624.509 or s. 624.5091.

171 (3)(a) Beginning September 1, 2019, the department shall
172 accept applications for certification as a growth fund on a form
173 prescribed by the department. The application must include:

174 1. The total investment authority sought by the applicant;

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175 2. A copy of the applicant's, or an affiliate of the
176 applicant's, license as a rural business investment company
177 under 7 U.S.C. s. 2009cc or as a small business investment
178 company under 15 U.S.C. s. 681;

179 3. Evidence that, as of the date the application is
180 submitted, the applicant or affiliates of the applicant have
181 invested at least \$100 million in private companies located in
182 nonmetropolitan counties as defined by the federal Office of
183 Management and Budget on the basis of county or county-
184 equivalent units;

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

188 5. A business plan that includes a revenue impact
189 assessment projecting state and local tax revenue and reductions
190 in state expenditures attributable to the applicant's proposed
191 growth investments. The business plan must be prepared by a
192 nationally recognized independent third-party economic
193 forecasting firm using a dynamic economic forecasting model that
194 projects the impact of the investment over a period of 10 years
195 following the date the application is submitted to the
196 department; and

197 6. A signed affidavit from each investor stating the amount
198 of investor contributions each investor commits to make.

199 (b) Within 30 days after receipt of a completed
200 application, the department shall grant or deny the application.
201 The department shall deem applications received on the same day
202 as being simultaneously received.

203 (c) The investment authority approved by the department may

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204 not exceed an amount that would result in more than \$15 million
205 in tax credits being taken in any one year, excluding any
206 credits that are carried forward as authorized in paragraph
207 (4) (c). If approved applications that are simultaneously
208 received for investment authority collectively would exceed that
209 limit, the department shall proportionally reduce the investment
210 authority and the investor contributions for each such
211 application as necessary to comply with the limit.

212 (d) The department shall deny an application if:

213 1. The application is incomplete;

214 2. The revenue impact assessment submitted pursuant to
215 subparagraph (a)5. does not demonstrate that the applicant's
216 business plan will result in a positive economic impact on this
217 state over a 10-year period which exceeds the cumulative amount
218 of tax credits which would be issued to the applicant's
219 investors;

220 3. The investor contributions described in affidavits
221 submitted pursuant to subparagraph (a)6. do not total at least
222 75 percent of the total amount of investment authority sought
223 under the applicant's business plan; or

224 4. The department has already approved the maximum amount
225 of investment authority allowed under paragraph (c).

226 (e) Within 15 days after receipt of notice that the
227 department has denied an application on grounds identified in
228 subparagraph (d)1., subparagraph (d)2., or subparagraph (d)4.,
229 the applicant may provide additional information to the
230 department to complete, clarify, or cure such defects. The
231 department shall review the additional information and approve
232 or deny the application within 30 days after the original

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233 submission date of the application. The department may not
234 approve any application submitted after the original submission
235 date of the initially denied application until it approves or
236 denies the application for which additional information was
237 submitted.

238 (f) The department may not reduce the requested investment
239 authority of a growth fund or deny a growth fund application for
240 reasons other than those described in paragraphs (c) and (d).
241 Upon approval of an application, the department shall send to
242 the applicant a notice certifying the applicant as a growth fund
243 and specifying the amount of the applicant's investment
244 authority and the investor contributions required from each
245 investor who submitted an affidavit with the growth fund's
246 application. At least 10 percent of the growth fund's investment
247 authority must consist of equity investments contributed by
248 affiliates of the growth fund.

249 (g)1. Within 60 days after receiving a certification notice
250 issued pursuant to paragraph (f), a growth fund shall collect
251 all investor contributions and additional investments of cash
252 which are, when added to the investor contributions, at least
253 equal to the growth fund's investment authority.

254 2. Within 65 days after receiving a certification notice
255 issued pursuant to paragraph (f), a growth fund shall provide to
256 the department documentation that sufficiently proves that such
257 contributions and investments have been collected.

258 3. Upon receipt of the documentation required by
259 subparagraph 2., the department shall provide to each investor
260 who made an investor contribution a tax credit certificate in an
261 amount equal to that investor's contribution.

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262 (h) A growth fund's certification lapses if the growth fund
263 fails to fully comply with subparagraphs (g)1. and (g)2. If a
264 certification lapses, the corresponding investment authority and
265 investor contributions do not count toward the limits on program
266 funding prescribed by paragraph (c) and the department must
267 allocate any lapsed investment authority on a pro rata basis to
268 each growth fund that was not awarded the full investment
269 authority it applied for. A growth fund may allocate, at its
270 discretion, the additional investor contribution authority to
271 any investor that has state premium tax liability. The
272 department may award any remaining investment authority to new
273 applicants.

274 (4) (a) An investor who makes an investor contribution is
275 vested with an earned credit against state premium tax liability
276 which is equal to its investor contribution. Twenty percent of
277 the credit may be used in each taxable year, beginning in the
278 calendar year following the second anniversary of the closing
279 date and concluding in the calendar year following the sixth
280 anniversary of the closing date, exclusive of amounts carried
281 forward pursuant to paragraph (c).

282 (b) The credit is nonrefundable and may not be sold,
283 transferred, or allocated to any entity other than an affiliate
284 that was an affiliate at the time of the submission of the
285 investor's affidavit included in the approved application.

286 (c) The amount of the credit claimed by an investor may not
287 exceed the amount of the investor's state premium tax liability
288 for the tax year in which the credit is claimed. Any amount of
289 tax credit which the entity does not claim in a taxable year may
290 be carried forward for use in future taxable years for a period

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291 not to exceed 10 years.

292 (d) An investor claiming a credit under this section must
293 submit a copy of the tax credit certificate with his or her tax
294 return for each taxable year in which the credit is claimed.

295 (5) (a) The department shall revoke a tax credit certificate
296 issued under subparagraph (3) (g)3. if, before a growth fund
297 exits the program in accordance with paragraph (e), any of the
298 following occurs:

299 1. Within 2 years after the closing date, the growth fund
300 does not invest 100 percent of its investment authority in
301 growth investments in this state;

302 2. The growth fund, after investing 100 percent of its
303 investment authority in growth investments in this state within
304 2 years after the closing date, fails to maintain growth
305 investments equal to 100 percent of its investment authority at
306 any time prior to the sixth anniversary after the closing date.
307 For the purposes of this subparagraph, an investment is
308 "maintained" even if it is sold or repaid, so long as the growth
309 fund reinvests an amount equal to the capital returned or
310 recovered from the original investment, exclusive of any profits
311 realized, in other growth investments in this state within 12
312 months after the receipt of such capital. Amounts received
313 periodically by a growth fund are deemed continuously invested
314 in growth investments if the amounts are reinvested in one or
315 more growth investments by the end of the following calendar
316 year;

317 3. Before exiting the program in accordance with paragraph
318 (e), the growth fund makes a distribution or payment that
319 results in the growth fund having less than 100 percent of its

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320 investment authority invested in growth investments in this
321 state or available for investment in growth investments and held
322 in cash and other marketable securities; or

323 4. The growth fund makes a growth investment in a growth
324 business that directly, or indirectly through an affiliate,
325 owns; has the right to acquire an ownership interest in; makes a
326 loan to; or makes an investment in the growth fund, an affiliate
327 of the growth fund, or an investor in the growth fund. This
328 subparagraph does not apply to investments in publicly traded
329 securities by a growth business or an owner or an affiliate of
330 the growth business. For purposes of this subparagraph, a growth
331 fund is not considered an affiliate of a growth business solely
332 because of its growth investment in that business.

333 (b) The maximum amount of growth investments in a growth
334 business, including amounts invested in affiliates of the growth
335 business, which a growth fund may count toward its satisfaction
336 of the requirements of subparagraphs (a)1. and 2. is 20 percent
337 of its investment authority, up to a maximum of \$5 million.

338 (c) Before revoking tax credit certificates under this
339 subsection, the department must notify the growth fund of the
340 reasons for the pending revocation. The growth fund has 90 days
341 after the date the notice is received to address, to the
342 satisfaction of the department, any issue identified in the
343 notice.

344 (d) If a tax credit certificate is revoked under this
345 subsection, the associated investment authority and investor
346 contributions do not count toward the limit on total investment
347 authority and investor contributions imposed in paragraph
348 (3) (c). The department shall distribute reverted investment

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349 authority pro rata to each growth fund awarded less than the
350 requested investment authority for which it applied. Such a
351 growth fund may allocate, at its discretion, the associated
352 investor contribution authority to any investor that has state
353 premium tax liability. The department may award any remaining
354 investment authority to new applicants.

355 (e)1. On or after the seventh anniversary of the closing
356 date, a growth fund may apply to the department to exit the
357 program and no longer be subject to regulation under this
358 section except as provided in this paragraph. The department
359 shall respond to the application within 30 days after receiving
360 the application. The department shall approve the application if
361 none of the growth fund's tax credit certificates have been
362 revoked and the growth fund has not received a notice of
363 revocation that is currently pending. The department may not
364 unreasonably deny an exit application submitted pursuant to this
365 paragraph. If the application is denied, the notice must include
366 the reasons for the denial.

367 2. After its exit from the program pursuant to subparagraph
368 1., a growth fund may not make distributions to its equity
369 holders unless it has made growth investments equal to at least
370 150 percent of its investment authority. The growth fund must
371 continue to annually report the amount of its growth investments
372 to the department until it has made the required growth
373 investments.

374 3. At any time the growth fund proposes to make a
375 distribution to its equity holders which, when added to all
376 previous distributions to its equity holders, would be in excess
377 of its investment authority, the growth fund must remit to the

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378 department a payment equal to the proposed distribution
379 multiplied by a fraction, the numerator of which is the
380 aggregate number of new annual jobs and jobs retained reported
381 to the department pursuant to subsection (8) and the denominator
382 of which is the projected number of new annual jobs and jobs
383 retained in an application made by the growth fund under
384 subsection (3).

385 (f) The department may not revoke a tax credit certificate
386 after a growth fund exits the program.

387 (6) Before making a growth investment, a growth fund may
388 request that the department issue a written opinion as to
389 whether the business in which it proposes to invest qualifies as
390 a growth business. The department, no later than 15 business
391 days after the receipt of the request, shall notify the growth
392 fund of its determination. If the department fails to timely
393 notify the growth fund of its determination, the business is
394 considered a growth business.

395 (7) An out-of-state business that uses the proceeds of a
396 growth investment to establish its principal place of business
397 operations in a growth zone in the state and relocate or hire
398 employees at the new location is deemed to have its principal
399 place of business operations in this new location if it meets
400 the definition of the term "principal place of business"
401 provided in paragraph (2) (m) within 180 days after receiving the
402 growth investment, unless granted an extension of time by the
403 department.

404 (8) (a) Each growth fund shall submit a report to the
405 department on or before the fifth business day after each
406 anniversary of the closing date unless the growth fund has

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407 exited the program. The report must provide documentation as to
408 each growth investment made by the growth fund and include:
409 1. A bank statement evidencing each growth investment;
410 2. The name, location, and industry of each growth business
411 receiving a growth investment, including evidence that the
412 business qualified as a growth business at the time the
413 investment was made or a determination notice was issued
414 pursuant to subsection (6);
415 3. The number of employment positions at each growth
416 business on the date of the growth fund's initial investment;
417 4. The number of new annual jobs and retained jobs at each
418 growth business. The number of retained jobs must be calculated
419 based on the monthly average of high-wage employment positions
420 and may not exceed the number of retained jobs on the first
421 anniversary report. If the number of new annual jobs is less
422 than zero, the growth fund must report the number of new annual
423 jobs as zero;
424 5. The average annual salary of the jobs reported under
425 subparagraph 4.;
426 6. The cumulative amount of growth investments made in the
427 growth business; and
428 7. Any other information required by the department.
429 (b) The growth fund shall provide the department with an
430 annual report for redeemed or repaid growth investments if the
431 annual report for such investments is available.
432 (9) The department may adopt rules to implement this
433 section.
434 (10) The department shall notify the Department of Revenue
435 of the name of any insurance company allocated tax credits

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436 pursuant to this act and the amount of such credits.

437 (11) This section applies to tax returns or reports

438 originally due on or after January 1, 2020.

439 Section 2. This act shall take effect October 1, 2019.