

By the Committee on Finance and Tax; and Senators Montford, Torres, Baxley, Broxson, and Gruters

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1 A bill to be entitled
2 An act relating to rural communities; 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 approval as
6 growth funds in a specified manner; specifying
7 information required to be submitted in an
8 application; requiring the department to approve or
9 deny the applications within a specified timeframe;
10 prohibiting the department from approving more than a
11 certain amount of investment authority or investor
12 contributions; requiring the department to deny
13 applications under certain circumstances; authorizing
14 an applicant whose application was denied to provide
15 additional information within a certain timeframe to
16 cure defects in the application; prohibiting the
17 department from reducing the investment authority of
18 an application or denying an application unless
19 certain circumstances are met; requiring the
20 department to certify approved applications; requiring
21 the growth fund to collect contributions and
22 investments within a certain timeframe; requiring the
23 department to provide a tax credit certificate to
24 certain taxpayers; requiring the department to revoke
25 a growth fund's certification under specified
26 conditions; granting a credit against state premium
27 tax liability for specified investors; providing
28 restrictions on the credit; requiring that a taxpayer
29 claiming a credit submit a copy of the tax credit

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certificate with his or her tax return; requiring the department to revoke a tax credit certificate under certain circumstances; authorizing a growth fund to request certain determinations from the department; providing a formula for calculating the maximum amount of investments; specifying a timeframe within which a growth fund may correct violations to avoid revocation of a tax credit certificate; requiring the department to distribute reverted investment authority among certain growth funds; authorizing the growth fund to submit an exit application; providing procedures for use by the department in handling exit applications; prohibiting a growth fund that has exited the program from making certain distributions or paying certain fees under certain circumstances; requiring the growth fund to remit certain payments to the department under certain circumstances; requiring the growth fund to submit a report to the department at a specified time; prohibiting the department from revoking a growth fund's tax credit certificate after it exits the program; requiring the growth fund to submit an annual report to the department; requiring that the annual report include certain information; providing for rulemaking; requiring the department to notify the Department of Revenue of any insurance company that is allocated tax credits; specifying that a growth fund is deemed to be a recipient of state financial assistance under certain circumstances; providing applicability; providing for future expiration;

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59 providing an effective date.

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61 Be It Enacted by the Legislature of the State of Florida:

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63 Section 1. Section 288.062, Florida Statutes, is created to
64 read:65 288.062 Florida Rural Jobs and Business Recovery Act.-66 (1) This section may be cited as the "Florida Rural Jobs
67 and Business Recovery Act."68 (2) The following terms when used in this section shall
69 have the following meanings except where the context clearly
70 indicates a different meaning:71 (a) "Affiliate" means an entity that directly, or
72 indirectly through one or more intermediaries, controls, is
73 controlled by, or is under common control with another entity.
74 For the purposes of this paragraph, an entity is "controlled by"
75 another entity if the controlling entity holds, directly or
76 indirectly, the majority voting or ownership interest in the
77 controlled entity or has control over the day-to-day operations
78 of the controlled entity.79 (b) "Closing date" means the date on which a growth fund
80 has collected all amounts specified by paragraph (8)(a).81 (c) "Department" means the Department of Economic
82 Opportunity.83 (d) "Full-time high wage employment position" means an
84 employment position that is filled, pays a high wage and
85 requires at least 35 hours of work per week or any other period
86 of time generally accepted by custom, industry, or practice as
87 full-time employment.

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

90 1. Has fewer than 200 employees;

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

93 3. Is engaged in North American Industry Classification
94 System sectors: 11, 21, 22, 23, 31-33, 48-49, 54, or 62.
95 However, if the business is not engaged in such industries, the
96 department shall determine whether the investment will create
97 new jobs or retain jobs.

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

100 (g) "Growth investment" means any capital or equity
101 investment in a growth business or any loan to a growth business
102 with a stated maturity at least 1 year after the date of
103 issuance.

104 (h) "Growth zone" means:

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

108 2. Any urbanized area within a county designated by Federal
109 Emergency Management Agency declaration FEMA-4399-DR if the
110 urbanized area had sustained winds in excess of 100 miles per
111 hour during Hurricane Michael.

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

114 (j) "Investment authority" means the amount certified by
115 the department under subsection (7). At least 75 percent of a
116 growth fund's investment authority must consist of investor

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117 contributions.

118 (k) "Investor contribution" means a cash investment in a
119 growth fund by an entity that is subject to the state premium
120 tax under ss. 624.509 and 624.5091. The cash investment must
121 equal the amount specified for that entity in the department's
122 approval of a growth fund's application under subsection (4).
123 The cash investment shall purchase an equity interest in the
124 growth fund or purchase, at par value or premium, a debt
125 instrument that has a maturity date at least 5 years from the
126 closing date and a repayment schedule that is no greater than
127 level principal amortization over 5 years.

128 (l) "Jobs retained" means the number of full-time high wage
129 employment positions that existed before the initial growth
130 investment in a growth business and for which the growth
131 business's chief executive officer or similar officer certifies
132 that the employment positions would have been eliminated but for
133 the initial growth investment.

134 (m) "New annual jobs" means the difference between:
135 1.a. The average monthly number of full-time high wage
136 employment positions at a growth business in the preceding
137 calendar year; or
138 b. If the initial growth investment occurred during the
139 preceding calendar year, the average monthly number of full-time
140 high wage employment positions for the months during which the
141 initial growth investment was made through the end of the
142 preceding calendar year; and

143 2. The number of full-time high wage employment positions
144 at the growth business on the date of the initial growth
145 investment.

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147 If the resulting total is less than zero, the new annual jobs
148 amount is equal to zero.

149 (n) "Principal business operation" of a business is the
150 location or locations where at least 60 percent of the
151 business's employees work or where the employees who are paid at
152 least 60 percent of the business's payroll are located. A
153 business that agrees to relocate or hire new employees using the
154 proceeds of a growth investment to establish its principal
155 business operation in a growth zone in the state is deemed to
156 have its principal business operations in the new location
157 provided it satisfies this definition within 180 days after
158 receiving the growth investment, unless the department agrees to
159 a later date.

160 (o) "State premium tax" means the tax identified in s.
161 624.509 or s. 624.5091.

162 (3) Beginning September 1, 2019, the department shall
163 accept applications for approval as a growth fund on a form
164 adopted by the department. The application shall include the
165 following:

166 (a) The total investment authority sought by the applicant.
167 (b) Evidence that:
168 1. The applicant or an affiliate of the applicant is
169 licensed as a rural business investment company under 7 U.S.C.
170 s. 2009cc or as a small business investment company under 15
171 U.S.C. s. 681. The applicant or the affiliate must include a
172 certificate executed by an executive officer of the applicant
173 attesting that such license remains in effect and has not been
174 revoked; and

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175 2. At least one principal in a rural business investment
176 company or a small business investment company is, and has been
177 for at least 4 years, an officer or employee of the applicant or
178 an affiliate of the applicant on the date the application is
179 submitted.

180 (c) Evidence that as of the date the application is
181 submitted, the applicant or affiliates of the applicant have
182 invested at least \$100 million in nonpublic companies located in
183 nonmetropolitan counties as defined by the Office of Management
184 and Budget within the Office of the President of the United
185 States on the basis of county or county-equivalent units.

186 (d) An estimate of the total number of new annual jobs that
187 will be created and jobs retained over the life of the program
188 in this state because of the applicant's growth investments.

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

198 (f) A signed affidavit from each investor stating the
199 amount of investor contribution the investor will make.

200 (g) A commitment by the growth fund applicant to give first
201 priority to growth investments located in those counties
202 designated by Federal Emergency Management Agency declaration
203 FEMA-4399-DR.

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204 (4) (a) Within 45 days after receipt of a completed
205 application containing the information set forth in subsection
206 (3), the department shall approve or deny the application.

207 (b) The department shall deem applications that are
208 received on the same day as having been received simultaneously.

209 (c) The department shall approve investment authority up to
210 an amount that would allow no more than \$5 million in tax
211 credits to be taken in any one year, excluding any credits that
212 are carried forward pursuant to paragraph (10) (c). No more than
213 a total of \$25 million in tax credits may be approved by the
214 department under the program. If requests for investment
215 authority exceed this tax credit limitation, the department
216 shall proportionally reduce the investment authority and the
217 investor contributions for each approved application as
218 necessary to avoid exceeding the limit.

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

220 (a) The application is incomplete;
221 (b) The applicant does not satisfy the criteria set forth
222 in subsection (3);

223 (c) The revenue impact assessment submitted under paragraph
224 (3) (e) does not demonstrate that the applicant's business plan
225 will result in a positive revenue impact on this state over a
226 10-year period that exceeds the cumulative amount of tax credits
227 that would be issued to the applicant's investors;

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

232 (e) The department has already approved the maximum amount

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233 of investment authority and investor contributions allowed under
234 subsection (4).

235 (6) If the department denies an application, the applicant,
236 within 15 days after the denial, may provide additional
237 information to the department to cure any defects in the
238 application identified by the department, except for failure to
239 comply with paragraph (5)(c), paragraph (5)(d), or paragraph
240 (5)(e). The department shall review and reconsider such
241 applications within 30 days after receipt and before approving
242 any pending applications submitted after the original submission
243 date of the reconsidered application.

244 (7) The department shall not reduce the requested
245 investment authority or deny a growth fund application for
246 reasons other than those described in subsection (4) or
247 subsection (5). After the department approves an application, it
248 shall certify:

249 (a) The applicant as a growth fund;
250 (b) The amount of the applicant's investment authority;
251 (c) The investor contributions required from each investor
252 that submitted an affidavit with the growth fund's application;
253 and
254 (d) The number of new annual jobs and jobs retained that
255 will be required of the growth fund, as prorated, based on the
256 investment authority awarded to the growth fund.

257 (8) (a) Within 60 days after receiving the certification
258 issued under subsection (7), a growth fund shall collect all
259 investor contributions and collect additional investments of
260 cash that, when added to the investor contributions, at least
261 equal the growth fund's investment authority. Within 65 days

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262 after receiving the certification issued under subsection (7), a
263 growth fund shall send to the department documentation that it
264 has collected the amounts described in this subsection. At least
265 10 percent of the growth fund's investment authority must
266 consist of equity investments contributed by affiliates of the
267 growth fund. The growth fund shall report to the department the
268 date on which the investor contributions and additional
269 investments of cash were collected.

270 (b) Upon receipt of the documentation required by paragraph
271 (a), the department shall provide a tax credit certificate to
272 each taxpayer who has made an investor contribution in the
273 amount of the investor contribution.

274 (9) If the growth fund fails to fully comply with
275 subsection (8), the department shall revoke the growth fund's
276 certification and the corresponding investment authority and
277 investor contributions will not count toward the limits on the
278 program size set forth in subsection (4). The department shall
279 first award revoked investment authority pro rata to each growth
280 fund that was awarded less than the investment authority for
281 which it applied, and a growth fund may allocate the associated
282 investor contribution authority to any taxpayer with state
283 premium tax liability in its discretion. Any remaining
284 investment authority may be awarded by the department to new
285 applicants.

286 (10) (a) Any taxpayer that makes an investor contribution is
287 vested with an earned credit against state premium tax liability
288 equal to that investor's investor contribution. The credit may
289 be used over 5 years such that 20 percent of the credit is
290 applied in each of the taxable years that includes the year of

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291 the closing date through the fourth anniversary of the closing
292 date, unless a specific request is made to carry them forward
293 for a period not to exceed 10 years.

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

299 (c) The amount of the credit claimed by a taxpayer may not
300 exceed the amount of such taxpayer's state premium tax liability
301 for the tax year for which the credit is claimed.

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

305 (e) The credit shall be allowed after deducting from the
306 tax the deductions for assessments made pursuant to s. 440.51;
307 the credits for taxes paid under ss. 175.101 and 185.08; the
308 credits for income taxes paid under chapter 220; the credit
309 allowed under s. 624.509(5), as such credit is limited by s.
310 624.509(6); and the credit allowed under s. 624.51055.

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

315 (a) The growth fund does not invest 100 percent of its
316 investment authority in growth investments in this state within
317 2 years of the closing date;

318 (b) The growth fund, after initially satisfying paragraph
319 (a), fails to maintain growth investments equal to 100 percent

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320 of its investment authority until the sixth anniversary of the
321 closing date. For purposes of this paragraph, an investment is
322 "maintained" even if it is sold or repaid, so long as the growth
323 fund reinvests an amount equal to the capital returned or
324 recovered from the original investment, exclusive of any profits
325 realized, in other growth investments in this state within 12
326 months of the receipt of such capital. Amounts received
327 periodically by a growth fund shall be treated as continuously
328 invested in growth investments if the amounts are reinvested in
329 one or more growth investments by the end of the following
330 calendar year;

331 (c) The growth fund, before exiting the program in
332 accordance with paragraph (16)(a), makes a distribution or
333 payment that results in the growth fund having less than 100
334 percent of its investment authority invested in growth
335 investments in this state or available for investment in growth
336 investments and held in cash and other marketable securities; or

337 (d) The growth fund invests in a growth business that
338 directly or indirectly through an affiliate owns, has the right
339 to acquire an ownership interest, makes a loan to, or makes an
340 investment in the growth fund, an affiliate of the growth fund,
341 or an investor in the growth fund. This paragraph does not apply
342 to investments in publicly traded securities by a growth
343 business or an owner or affiliate of such growth business. For
344 purposes of this paragraph, a growth fund is not considered an
345 affiliate of a growth business solely because of its growth
346 investment.

347 (12) Before making a growth investment, a growth fund may
348 request a written opinion from the department as to whether the

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349 business in which it proposes to invest satisfies the definition
350 of a growth business. The department, not later than the 15th
351 business day after the date of receipt of the request, shall
352 provide the growth fund with a determination letter providing
353 its opinion. If the department fails to issue a determination
354 letter by the 15th business day, the business in which the
355 growth fund proposes to invest shall be considered a growth
356 business.

357 (13) The maximum amount of growth investments in a growth
358 business, including amounts invested in affiliates of the growth
359 business, that a growth fund may count in satisfying the
360 requirements of paragraphs (11)(a) and (b) is the greater of \$5
361 million or 20 percent of its investment authority, exclusive of
362 repaid or redeemed growth investments.

363 (14) Before revoking a tax credit certificate under
364 subsection (11), the department shall notify the growth fund of
365 the reasons for the pending revocation. The growth fund shall
366 have 90 days from the date the notice was received to correct
367 any violation outlined in the notice to the satisfaction of the
368 department and avoid revocation of the tax credit certificate.

369 (15) If the department revokes any tax credit certificates
370 under subsection (11), the associated investment authority and
371 investor contributions will not count toward the limit on total
372 investment authority and investor contributions described in
373 subsection (4). The department may award any remaining
374 investment authority to new applicants.

375 (16) (a) On or after the seventh anniversary of the closing
376 date, a growth fund may apply to the department to exit the
377 program and no longer be subject to regulation except as set

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378 forth in paragraph (b). The department shall approve or deny the
379 application within 30 days of receipt. In evaluating the
380 application, the fact that no tax credit certificates have been
381 revoked and that the growth fund has not received a notice of
382 revocation that has not been cured pursuant to subsection (14)
383 is sufficient evidence to prove that the growth fund is eligible
384 for exit. The department shall not unreasonably deny an
385 application submitted under this paragraph. If the application
386 is denied, the notice shall include the reasons for the
387 determination.

388 (b) After its exit from the program in accordance with
389 paragraph (a), a growth fund may not make distributions or pay
390 any fees except as allowed under paragraph (11)(c) to its
391 investors unless it has made growth investments equal to at
392 least 150 percent of its investment authority. Each growth fund
393 shall continue to report the amount of growth investments made
394 to the department annually until it has made growth investments
395 equal to at least 150 percent of its investment authority.

396 (c) After its exit from the program in accordance with
397 paragraph (a), at any time the growth fund proposes to make a
398 distribution to its investors that, when added to all previous
399 distributions to its investors, exceeds its investment
400 authority, the growth fund shall remit to the department a
401 payment equal the product of the proposed distribution and the
402 difference between one and a fraction, the numerator of which is
403 the aggregate number of new annual jobs and jobs retained
404 reported to the department pursuant to subsection (18) and the
405 denominator of which is the number of new annual jobs and jobs
406 retained as set forth in the growth fund's certification. No

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407 payment is due if the aggregate number of new annual jobs and
408 jobs retained as of the date of the proposed distribution equal
409 or exceed the number of new annual jobs and jobs retained as
410 projected set forth in the growth fund's certificate issued
411 under subsection (7).

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

414 (18) (a) Each growth fund shall submit an annual report to
415 the department on or before the 5th business day after each
416 anniversary of the closing date prior to its exit from the
417 program in accordance with paragraph (16) (a). The report shall
418 identify each growth investment made by the growth fund and
419 shall include:

420 1. A bank statement evidencing each growth investment, if
421 not previously reported;

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

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

430 4. The number of new annual jobs and jobs retained at each
431 growth business, provided the number of jobs retained may not
432 exceed the number of jobs retained, as reported in subsection
433 (3) and the number of jobs retained that must be reduced if the
434 full-time high wage employment positions reported drops below
435 the jobs retained as reported in subsection (3);

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

438 6. The cumulative amount of growth investments made in
439 growth businesses; and

440 7. Any other information required by the department.

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

445 (19) The department:

446 (a) May adopt rules to implement the provisions of this
447 section.

448 (b) Shall adopt forms and notices to implement this
449 section.

450 (c) Shall notify the Department of Revenue of the name and
451 federal employer identification number of any insurance company
452 allocated tax credits under this act and the amount of such
453 credits.

454 (20) A growth fund that issues a growth investment approved
455 by the department shall be deemed a recipient of state financial
456 assistance under s. 215.97, the Florida Single Audit Act.
457 However, a growth fund business that receives a growth fund
458 investment is not a subrecipient for the purposes of s. 215.97.

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

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

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