

1 A bill to be entitled
2 An act relating to rural communities; creating s.
3 288.062, F.S.; providing a short title; providing
4 definitions; requiring the Department of Economic
5 Opportunity to accept applications seeking approval as
6 growth funds in a specified manner; requiring that the
7 applications contain certain materials, including an
8 application fee; requiring the department to approve
9 or deny the application within a specified time;
10 prohibiting the department from approving more than a
11 certain amount of investment authority or investor
12 contributions; requiring the department to deny an
13 application under certain circumstances; authorizing
14 an applicant whose application was denied to provide
15 additional information within a certain timeframe;
16 prohibiting the department from reducing the
17 investment authority of an application or denying an
18 application for certain reasons; requiring the
19 department to certify approved applications; requiring
20 the growth fund to collect contributions and
21 investments within a certain timeframe; requiring the
22 department to provide a tax credit certificate;
23 authorizing the department to revoke a growth fund's
24 certification under specified conditions; granting a
25 credit against state premium tax liability for

26 | specified investors; providing restrictions on the
27 | credit; requiring that a taxpayer claiming a credit
28 | submit a copy of the tax credit certificate with his
29 | or her tax return; requiring the department to revoke
30 | the tax credit certificate under certain
31 | circumstances; providing a formula for calculating the
32 | maximum amount of investments; specifying a time
33 | period within which a growth fund may correct
34 | violations; requiring the department to distribute
35 | reverted investment authority among certain growth
36 | funds; authorizing the growth fund to submit an exit
37 | application; providing procedures for use by the
38 | department in handling exit applications; authorizing
39 | the growth fund to request specified written opinions
40 | from the department; specifying procedure for
41 | recognizing a new principal place of business
42 | operations; requiring the growth fund to submit a
43 | report to the department at a specified time;
44 | requiring the growth fund to submit an annual report
45 | to the department; requiring that the annual report
46 | include certain information; providing for rulemaking;
47 | requiring the department to notify the Department of
48 | Revenue of any insurance company that is allocated tax
49 | credits; providing applicability; providing for future
50 | expiration; providing an effective date.

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

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

(a) "Affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another entity. For the purposes of this paragraph, an entity is "controlled by" another entity if the controlling entity holds, directly or indirectly, the majority voting or ownership interest in the controlled entity or has control over the day-to-day operations of the controlled entity.

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

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

(d) "Full-time high wage employment position" means an employment position that is filled, pays a high wage and

76 requires at least 35 hours of work per week or any other period
77 of time generally accepted by custom, industry, or practice as
78 full-time employment.

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

81 1. Has fewer than 200 employees;

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

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

86 However, if the business is not engaged in such industries, the
87 department shall determine whether the investment will create
88 new jobs or retain jobs.

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

91 (g) "Growth investment" means any capital or equity
92 investment in a growth business or any loan to a growth business
93 with a stated maturity at least 1 year after the date of
94 issuance.

95 (h) "Growth zone" means all locations outside an urban
96 area with a population equal to or greater than 50,000.

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

99 (j) "Investment authority" means the amount certified by
100 the department under subsection (7). At least 75 percent of a

101 growth fund's investment authority must consist of investor
102 contributions.

103 (k) "Investor contribution" means a cash investment in a
104 growth fund by an entity that is subject to the state premium
105 tax under ss. 624.509 and 624.5091. The cash investment must
106 equal the amount specified for that entity in the department's
107 approval of a growth fund's application under subsection (4).
108 The cash investment shall purchase an equity interest in the
109 growth fund or purchase, at par value or premium, a debt
110 instrument that has a maturity date at least 5 years from the
111 closing date and a repayment schedule that is no greater than
112 level principal amortization over 5 years.

113 (l) "Jobs retained" means the number of full-time high
114 wage employment positions that existed before the initial growth
115 investment in a growth business and for which the growth
116 business's chief executive officer or similar officer certifies
117 that the employment positions would have been eliminated but for
118 the initial growth investment.

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

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

123 b. If the initial growth investment occurred during the
124 preceding calendar year, the average monthly number of full-time
125 high wage employment positions for the months during which the

126 initial growth investment was made through the end of the
127 preceding calendar year; and

128 2. The number of full-time high wage employment positions
129 the growth business on the date of the initial growth
130 investment.

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

134 (n) "Principal business operation" of a business is the
135 location or locations where at least 60 percent of the
136 business's employees work or where the employees who are paid at
137 least 60 percent of the business's payroll are located. A
138 business that agrees to relocate or hire new employees using the
139 proceeds of a growth investment to establish its principal
140 business operation in a growth zone in the state is deemed to
141 have its principal business operations in the new location
142 provided it satisfies this definition within 180 days after
143 receiving the growth investment, unless the department agrees to
144 a later date.

145 (o) "State premium tax" means the tax identified in s.
146 624.509 or s. 624.5091.

147 (3) Beginning September 1, 2019, the department shall
148 accept applications for approval as a growth fund on a form
149 adopted by the department. The application shall include the
150 following:

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

153 (b) Evidence that:

154 1. The applicant or an affiliate of the applicant is
155 licensed as a rural business investment company under 7 U.S.C.
156 s. 2009cc or as a small business investment company under 15
157 U.S.C. s. 681. The applicant or the affiliate must include a
158 certificate executed by an executive officer of the applicant
159 attesting that such license remains in effect and has not been
160 revoked; and

161 2. At least one principal in a rural business investment
162 company or a small business investment company is, and has been
163 for at least 4 years, an officer or employee of the applicant or
164 an affiliate of the applicant on the date the application is
165 submitted.

166 (c) Evidence that as of the date the application is
167 submitted, the applicant or affiliates of the applicant have
168 invested at least \$100 million in nonpublic companies located in
169 nonmetropolitan counties as defined by the Office of Management
170 and Budget within the Office of the President of the United
171 States on the basis of county or county-equivalent units.

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

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

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

187 (g) A commitment by the growth fund applicant to give
188 first priority to growth investments located in those counties
189 designated by Federal Emergency Management Agency declaration
190 FEMA-4399-DR.

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

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

196 (c) The department shall approve investment authority up
197 to an amount that would allow no more than \$5 million in tax
198 credits to be taken in any one year, excluding any credits that
199 are carried forward pursuant to paragraph (10) (c). No more than
200 a total of \$25 million in tax credits may be approved by the

201 department under the program. If requests for investment
202 authority exceed this tax credit limitation, the department
203 shall proportionally reduce the investment authority and the
204 investor contributions for each approved application as
205 necessary to avoid exceeding the limit.

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

207 (a) The application is incomplete;

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

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

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

220 (e) The department has already approved the maximum amount
221 of investment authority and investor contributions allowed under
222 subsection (4).

223 (6) If the department denies an application, the
224 applicant, within 15 days after the denial, may provide
225 additional information to the department to cure any defects in

226 the application identified by the department, except for failure
227 to comply with paragraph (5) (c), paragraph (5) (d), or paragraph
228 (5) (e). The department shall review and reconsider such
229 applications within 30 days after receipt and before approving
230 any pending applications submitted after the original submission
231 date of the reconsidered application.

232 (7) The department shall not reduce the requested
233 investment authority or deny a growth fund application for
234 reasons other than those described in subsection (4) or
235 subsection (5). After the department approves an application, it
236 shall certify:

237 (a) The applicant as a growth fund;
238 (b) The amount of the applicant's investment authority;
239 (c) The investor contributions required from each investor
240 that submitted an affidavit with the growth fund's application;
241 and

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

245 (8) (a) Within 60 days after receiving the certification
246 issued under subsection (7), a growth fund shall collect all
247 investor contributions and collect additional investments of
248 cash that, when added to the investor contributions, at least
249 equal the growth fund's investment authority. Within 65 days
250 after receiving the certification issued under subsection (7), a

251 growth fund shall send to the department documentation that it
252 has collected the amounts described in this subsection. At least
253 10 percent of the growth fund's investment authority must
254 consist of equity investments contributed by affiliates of the
255 growth fund. The growth fund shall report to the department the
256 date on which the investor contributions and additional
257 investments of cash were collected.

258 (b) Upon receipt of the documentation required by
259 paragraph (a), the department shall provide a tax credit
260 certificate to each taxpayer who has made an investor
261 contribution in the amount of the investor contribution.

262 (9) If the growth fund fails to fully comply with
263 subsection (8), the department shall revoke the growth fund's
264 certification and the corresponding investment authority and
265 investor contributions will not count toward the limits on the
266 program size set forth in subsection (4). The department shall
267 first award revoked investment authority pro rata to each growth
268 fund that was awarded less than the investment authority for
269 which it applied, and a growth fund may allocate the associated
270 investor contribution authority to any taxpayer with state
271 premium tax liability in its discretion. Any remaining
272 investment authority may be awarded by the department to new
273 applicants.

274 (10) (a) Any taxpayer that makes an investor contribution is
275 vested with an earned credit against state premium tax liability

276 equal to that investor's investor contribution. The credit may
277 be used over 5 years such that 20 percent of the credit is
278 applied in each of the taxable years that includes the year of
279 the closing date through the fourth anniversary of the closing
280 date, unless a specific request is made to carry them forward
281 for a period not to exceed 10 years.

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

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

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

293 (e) The credit shall be allowed after deducting from the
294 tax the deductions for assessments made pursuant to s. 440.51;
295 the credits for taxes paid under ss. 175.101 and 185.08; the
296 credits for income taxes paid under chapter 220; the credit
297 allowed under s. 624.509(5), as such credit is limited by s.
298 624.509(6); and the credit allowed under s. 624.51055.

299 (11) The department must revoke the tax credit
300 certificates issued under paragraph (8)(b) if any of the

301 following occur with respect to a growth fund before the growth
302 fund exits the program in accordance with paragraph (15) (a):

303 (a) The growth fund does not invest 100 percent of its
304 investment authority in growth investments in this state within
305 2 years of the closing date;

306 (b) The growth fund, after initially satisfying paragraph
307 (a), fails to maintain growth investments equal to 100 percent
308 of its investment authority until the sixth anniversary of the
309 closing date. For purposes of this paragraph, an investment is
310 "maintained" even if it is sold or repaid so long as the growth
311 fund reinvests an amount equal to the capital returned or
312 recovered from the original investment, exclusive of any profits
313 realized, in other growth investments in this state within 12
314 months of the receipt of such capital. Amounts received
315 periodically by a growth fund shall be treated as continuously
316 invested in growth investments if the amounts are reinvested in
317 one or more growth investments by the end of the following
318 calendar year;

319 (c) The growth fund, before exiting the program in
320 accordance with paragraph (15) (a), makes a distribution or
321 payment that results in the growth fund having less than 100
322 percent of its investment authority invested in growth
323 investments in this state or available for investment in growth
324 investments and held in cash and other marketable securities; or

325 (d) The growth fund invests in a growth business that

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

335 (12) Before making a growth investment, a growth fund may
336 request a written opinion from the department as to whether the
337 business in which it proposes to invest satisfies the definition
338 of a growth business. The department, not later than the 15th
339 business day after the date of receipt of the request, shall
340 provide the growth fund with a determination letter providing
341 its opinion. If the department fails to issue a determination
342 letter by the 15th business day, the business in which the
343 growth fund proposes to invest shall be considered a growth
344 business.

345 (13) The maximum amount of growth investments in a growth
346 business, including amounts invested in affiliates of the growth
347 business, that a growth fund may count in satisfying the
348 requirements of paragraphs (11) (a) and (b) is the greater of \$5
349 million or 20 percent of its investment authority, exclusive of
350 repaid or redeemed growth investments.

351 (14) Before revoking a tax credit certificate under
352 subsection (13), the department shall notify the growth fund of
353 the reasons for the pending revocation. The growth fund shall
354 have 90 days from the date the notice was received to correct
355 any violation outlined in the notice to the satisfaction of the
356 department and avoid revocation of the tax credit certificate.

357 (15) If the department revokes any tax credit certificates
358 under subsection (11), the associated investment authority and
359 investor contributions will not count toward the limit on total
360 investment authority and investor contributions described in
361 subsection (4). The department shall first award reverted
362 investment authority pro rata to each growth fund that was
363 awarded less than the requested investment authority for which
364 it applied, and such growth fund may allocate the associated
365 investor contribution authority to any taxpayer with state
366 premium tax liability in its discretion. The department may
367 award any remaining investment authority to new applicants.

368 (16) (a) On or after the seventh anniversary of the closing
369 date, a growth fund may apply to the department to exit the
370 program and no longer be subject to regulation except as set
371 forth in paragraph (b). The department shall approve or deny the
372 application within 30 days of receipt. In evaluating the
373 application, the fact that no tax credit certificates have been
374 revoked and that the growth fund has not received a notice of
375 revocation that has not been cured pursuant to subsection (14)

376 is sufficient evidence to prove that the growth fund is eligible
377 for exit. The department shall not unreasonably deny an
378 application submitted under this paragraph. If the application
379 is denied, the notice shall include the reasons for the
380 determination.

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

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

401 jobs retained as of the date of the proposed distribution equal
402 or exceed the number of new annual jobs and jobs retained as
403 projected set forth in the growth fund's certificate issued
404 under subsection (7).

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

407 (18) (a) Each growth fund shall submit an annual report to
408 the department on or before the 5th business day after each
409 anniversary of the closing date prior to its exit from the
410 program in accordance with paragraph (16) (a). The report shall
411 identify each growth investment made by the growth fund and
412 shall include:

413 1. A bank statement evidencing each growth investment, if
414 not previously reported;

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

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

423 4. The number of new annual jobs and jobs retained at each
424 growth business, provided the number of jobs retained may not
425 exceed the number of jobs retained, as reported in subsection

426 (3) and the number of jobs retained that must be reduced if the
427 full-time high wage employment positions reported drops below
428 the jobs retained as reported in subsection (3);

429 5. The average annual salary of the positions described in
430 subsection (4);

431 6. The cumulative amount of growth investments made in
432 growth businesses; and

433 7. Any other information required by the department.

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

438 (19) The department:

439 (a) May adopt rules to implement the provisions of this
440 section.

441 (b) Shall adopt forms and notices to implement this
442 section.

443 (c) Shall notify the Department of Revenue of the name of
444 any insurance company allocated tax credits under this act and
445 the amount of such credits.

446 (20) A growth fund that issues a growth investment
447 approved by the department shall be deemed a recipient of state
448 financial assistance under s. 215.97, the Florida Single Audit
449 Act. However, a growth fund business that receives a growth fund
450 investment is not a subrecipient for the purposes of s. 215.97.

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

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

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