

By Senator Montford

3-00617-20

2020848

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; requiring certain
7 information to be submitted in an application;
8 requiring the department to approve or deny
9 applications within a specified timeframe; prohibiting
10 the department from approving more than a certain
11 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; requiring the
17 department to review and reconsider such applications
18 within a certain timeframe; prohibiting the department
19 from reducing the investment authority of an
20 application or denying an application unless certain
21 circumstances are met; requiring the department to
22 certify approved applications; providing requirements
23 for certified growth funds; requiring the department
24 to provide a tax credit certificate to certain
25 taxpayers; requiring the department to revoke a growth
26 fund's certification under specified conditions;
27 requiring the department to distribute revoked
28 investment authority among certain growth funds;
29 authorizing growth funds to allocate associated

3-00617-20

2020848

30 investor contribution authority to certain taxpayers;
31 granting a credit against state premium tax liability
32 for specified investors; providing restrictions on the
33 credit; requiring that taxpayers claiming a credit
34 submit a copy of the tax credit certificate with their
35 tax return; requiring the department to revoke a tax
36 credit certificate under certain circumstances;
37 authorizing growth funds to request certain
38 determinations from the department; providing a
39 formula for calculating the maximum amount of
40 investments; specifying a timeframe within which
41 growth funds may correct violations to avoid
42 revocation of a tax credit certificate; authorizing
43 the department to distribute reverted investment
44 authority among certain growth funds; authorizing
45 growth funds to submit an exit application; providing
46 a timeframe and procedures for use by the department
47 in handling exit applications; prohibiting growth
48 funds that have exited the program from making certain
49 distributions or paying certain fees under certain
50 circumstances; requiring growth funds to remit certain
51 payments to the department under certain
52 circumstances; prohibiting the department from
53 revoking a growth fund's tax credit certificate after
54 it exits the program; requiring growth funds to submit
55 an annual report to the department; requiring that the
56 annual report include certain information; providing
57 for rulemaking; requiring the department to notify the
58 Department of Revenue of any insurance company that is

3-00617-20

2020848

59 allocated tax credits; specifying that a growth fund
60 is deemed to be a recipient of state financial
61 assistance under certain circumstances; providing
62 applicability; providing for future expiration;
63 providing an effective date.

64

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

66

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

69 288.062 Florida Rural Jobs and Business Recovery Act.-

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

72 (2) The following terms when used in this section shall
73 have the following meanings unless the context clearly indicates
74 otherwise:

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

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

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

87 (d) "Full-time high wage employment position" means an

3-00617-20

2020848

88 employment position that is filled, pays a high wage, and
89 requires at least 35 hours of work per week or any other period
90 of time generally accepted by custom, industry, or practice as
91 full-time employment.

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

94 1. Has fewer than 200 employees;

95 2. Has its principal business operations in at least one
96 growth zone in this state; and

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

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

104 (g) "Growth investment" means any capital or equity
105 investment in a growth business or any loan to a growth business
106 with a stated maturity at least 1 year after the date of
107 issuance.

108 (h) "Growth zone" means:

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

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

116 (i) "High wage" means a wage in any county which is greater

3-00617-20

2020848

117 than 100 percent of the county average.

118 (j) "Investment authority" means the amount certified by
119 the department under subsection (7). At least 75 percent of a
120 growth fund's investment authority must consist of investor
121 contributions.

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

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

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

3-00617-20

2020848

146 preceding calendar year; and

147 2. The number of full-time high wage employment positions
148 at the growth business on the date of the initial growth
149 investment.

150

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

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

164 (o) "State premium tax" means the tax identified in s.
165 624.509 or s. 624.5091.

166 (3) Beginning September 1, 2020, the department shall
167 accept applications for approval as a growth fund on a form
168 adopted by the department. The application shall include the
169 following:

170 (a) The total investment authority sought by the applicant.
171 (b) Evidence that:
172 1. The applicant or an affiliate of the applicant is
173 licensed as a rural business investment company under 7 U.S.C.
174 s. 2009cc or as a small business investment company under 15

3-00617-20

2020848

175 U.S.C. s. 681. The applicant or the affiliate must include a
176 certificate executed by an executive officer of the applicant
177 attesting that such license remains in effect and has not been
178 revoked; and

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

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

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

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

203 (f) A signed affidavit from each investor stating the

3-00617-20

2020848

204 amount of investor contribution the investor will make.

205 (g) A commitment by the growth fund applicant to give first
206 priority to growth investments located in those counties
207 designated by Federal Emergency Management Agency declaration
208 FEMA-4399-DR.

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

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

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

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

225 (a) The application is incomplete;

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

228 (c) The revenue impact assessment submitted under paragraph
229 (3) (e) does not demonstrate that the applicant's business plan
230 will result in a positive revenue impact on this state over a
231 10-year period which exceeds the cumulative amount of tax
232 credits that would be issued to the applicant's investors;

3-00617-20

2020848

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

237 (e) The department has already approved the maximum amount
238 of investment authority and investor contributions allowed under
239 subsection (4).

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

249 (7) The department shall not reduce the requested
250 investment authority or deny a growth fund application for
251 reasons other than those described in subsection (4) or
252 subsection (5). After the department approves an application, it
253 shall certify:

254 (a) The applicant as a growth fund;
255 (b) The amount of the applicant's investment authority;
256 (c) The investor contributions required from each investor
257 that submitted an affidavit with the growth fund's application;
258 and

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

3-00617-20

2020848

262 (8) (a) Within 60 days after receiving the certification
263 issued under subsection (7), a growth fund shall collect all
264 investor contributions and collect additional investments of
265 cash which, when added to the investor contributions, at least
266 equal the growth fund's investment authority. Within 65 days
267 after receiving the certification issued under subsection (7), a
268 growth fund shall send to the department documentation that it
269 has collected the amounts described in this subsection. At least
270 10 percent of the growth fund's investment authority must
271 consist of equity investments contributed by affiliates of the
272 growth fund. The growth fund shall report to the department the
273 date on which the investor contributions and additional
274 investments of cash were collected.

275 (b) Upon receipt of the documentation required by paragraph
276 (a), the department shall provide a tax credit certificate to
277 each taxpayer who has made an investor contribution in the
278 amount of the investor contribution.

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

3-00617-20

2020848

291 (10) (a) Any taxpayer that makes an investor contribution is
292 vested with an earned credit against state premium tax liability
293 equal to that investor's investor contribution. The credit may
294 be used over 5 years such that 20 percent of the credit is
295 applied in each of the taxable years that includes the year of
296 the closing date through the fourth anniversary of the closing
297 date, unless a specific request is made to carry them forward
298 for a period not to exceed 10 years.

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

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

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

310 (e) The credit shall be allowed after deducting from the
311 tax the deductions for assessments made pursuant to s. 440.51;
312 the credits for taxes paid under ss. 175.101 and 185.08; the
313 credits for income taxes paid under chapter 220; the credit
314 allowed under s. 624.509(5), as such credit is limited by s.
315 624.509(6); and the credit allowed under s. 624.51055.

316 (11) The department must revoke the tax credit certificates
317 issued under paragraph (8)(b) if any of the following occurs
318 with respect to a growth fund before the growth fund exits the
319 program in accordance with paragraph (16)(a):

3-00617-20

2020848

320 (a) The growth fund does not invest 100 percent of its
321 investment authority in growth investments in this state within
322 2 years of the closing date;

323 (b) The growth fund, after initially satisfying paragraph
324 (a), fails to maintain growth investments equal to 100 percent
325 of its investment authority until the sixth anniversary of the
326 closing date. For purposes of this paragraph, an investment is
327 maintained even if it is sold or repaid, so long as the growth
328 fund reinvests an amount equal to the capital returned or
329 recovered from the original investment, exclusive of any profits
330 realized, in other growth investments in this state within 12
331 months of the receipt of such capital. Amounts received
332 periodically by a growth fund shall be treated as continuously
333 invested in growth investments if the amounts are reinvested in
334 one or more growth investments by the end of the following
335 calendar year;

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

342 (d) The growth fund invests in a growth business that
343 directly, or indirectly through an affiliate, owns, has the
344 right to acquire an ownership interest in, makes a loan to, or
345 makes an investment in the growth fund of an affiliate of the
346 growth fund or an investor in the growth fund. This paragraph
347 does not apply to investments in publicly traded securities by a
348 growth business or an owner or affiliate of such growth

3-00617-20

2020848

349 business. For purposes of this paragraph, a growth fund is not
350 considered an affiliate of a growth business solely because of
351 its growth investment.

352 (12) Before making a growth investment, a growth fund may
353 request a written opinion from the department as to whether the
354 business in which it proposes to invest satisfies the definition
355 of a growth business. The department, not later than the 15th
356 business day after the date of receipt of the request, shall
357 provide the growth fund with a determination letter providing
358 its opinion. If the department fails to issue a determination
359 letter by the 15th business day, the business in which the
360 growth fund proposes to invest shall be considered a growth
361 business.

362 (13) The maximum amount of growth investments in a growth
363 business, including amounts invested in affiliates of the growth
364 business, which a growth fund may count in satisfying the
365 requirements of paragraphs (11)(a) and (b) is the greater of \$5
366 million or 20 percent of its investment authority, exclusive of
367 repaid or redeemed growth investments.

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

374 (15) If the department revokes any tax credit certificates
375 under subsection (11), the associated investment authority and
376 investor contributions will not count toward the limit on total
377 investment authority and investor contributions described in

3-00617-20

2020848

378 subsection (4). The department may award any remaining
379 investment authority to new applicants.

380 (16) (a) On or after the seventh anniversary of the closing
381 date, a growth fund may apply to the department to exit the
382 program and no longer be subject to regulation except as set
383 forth in paragraph (b). The department shall approve or deny the
384 application within 30 days of receipt. In evaluating the
385 application, the fact that no tax credit certificates have been
386 revoked and that the growth fund has not received a notice of
387 revocation that has not been cured pursuant to subsection (14)
388 is sufficient evidence to prove that the growth fund is eligible
389 for exit. The department shall not unreasonably deny an
390 application submitted under this paragraph. If the application
391 is denied, the notice shall include the reasons for the
392 determination.

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

401 (c) After its exit from the program in accordance with
402 paragraph (a), if the growth fund proposes to make a
403 distribution to its investors which, when added to all previous
404 distributions to its investors, exceeds its investment
405 authority, the growth fund shall remit to the department a
406 payment equal the product of the proposed distribution and the

3-00617-20

2020848

407 difference between one and a fraction, the numerator of which is
408 the aggregate number of new annual jobs and jobs retained
409 reported to the department pursuant to subsection (18) and the
410 denominator of which is the number of new annual jobs and jobs
411 retained as set forth in the growth fund's certification. No
412 payment is due if the aggregate number of new annual jobs and
413 jobs retained as of the date of the proposed distribution equals
414 or exceeds the number of new annual jobs and jobs retained as
415 projected in the growth fund's certificate issued under
416 subsection (7).

417 (17) The department may not revoke a tax credit certificate
418 after a growth fund exits the program.

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

425 1. A bank statement evidencing each growth investment, if
426 not previously reported;

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

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

435 4. The number of new annual jobs and jobs retained at each

3-00617-20

2020848

436 growth business, provided the number of jobs retained may not
437 exceed the number of jobs retained, as reported in subsection
438 (3) and the number of jobs retained that must be reduced if the
439 full-time high wage employment positions reported drops below
440 the jobs retained as reported in subsection (3);

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

443 6. The cumulative amount of growth investments made in
444 growth businesses; and

445 7. Any other information required by the department.

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

450 (19) The department:

451 (a) May adopt rules to implement this section.

452 (b) Shall adopt forms and notices to implement this
453 section.

454 (c) Shall notify the Department of Revenue of the name and
455 federal employer identification number of any insurance company
456 allocated tax credits under this act and the amount of such
457 credits.

458 (20) A growth fund that issues a growth investment approved
459 by the department shall be deemed a recipient of state financial
460 assistance under s. 215.97, the Florida Single Audit Act.

461 However, a growth fund business that receives a growth fund
462 investment is not a subrecipient for the purposes of s. 215.97.

463 (21) This section applies only to tax returns or reports
464 originally due on or after January 1, 2021.

3-00617-20

2020848

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(22) This section expires on December 21, 2031.

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Section 2. This act shall take effect July 1, 2020.