

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
30 | certificate with his or her tax return; requiring the
31 | department to revoke a tax credit certificate under
32 | certain circumstances; authorizing a growth fund to
33 | request certain determinations from the department;
34 | providing a formula for calculating the maximum amount
35 | of investments; specifying a timeframe within which a
36 | growth fund may correct violations to avoid revocation
37 | of a tax credit certificate; requiring the department
38 | to distribute reverted investment authority among
39 | certain growth funds; authorizing the growth fund to
40 | submit an exit application; providing procedures for
41 | use by the department in handling exit applications;
42 | prohibiting a growth fund that has exited the program
43 | from making certain distributions or paying certain
44 | fees under certain circumstances; requiring the growth
45 | fund to remit certain payments to the department under
46 | certain circumstances; requiring the growth fund to
47 | submit a report to the department at a specified time;
48 | prohibiting the department from revoking a growth
49 | fund's tax credit certificate after it exits the
50 | program; requiring the growth fund to submit an annual

51 report to the department; requiring that the annual
 52 report include certain information; providing for
 53 rulemaking; requiring the department to notify the
 54 Department of Revenue of any insurance company that is
 55 allocated tax credits; specifying that a growth fund
 56 is deemed to be a recipient of state financial
 57 assistance under certain circumstances; providing
 58 applicability; providing for future expiration;
 59 providing an effective date.

60

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

62

63 Section 1. Section 288.062, Florida Statutes, is created
 64 to 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 investments certified by the department as
81 provided in paragraph (8) (a).

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

84 (d) "Full-time high wage employment position" means an
85 employment position that is filled, pays a high wage, and
86 requires at least 35 hours of work per week or any other period
87 of time generally accepted by custom, industry, or practice as
88 full-time employment.

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

91 1. Has fewer than 200 employees;

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

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

96 However, if the business is not engaged in such industries, the
97 department shall determine whether the investment will create
98 new jobs or retain jobs.

99 (f) "Growth fund" means an entity that has been certified
100 by the department under subsection (7).

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

105 (h) "Growth zone" means:

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

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

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

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

119 (k) "Investor contribution" means a cash investment in a
120 growth fund by a taxpayer who is subject to the state premium
121 tax under ss. 624.509 and 624.5091. The cash investment must
122 equal the amount specified for that taxpayer in the department's
123 approval of a growth fund's application under subsection (4).
124 The cash investment shall purchase an equity interest in the
125 growth fund or purchase, at par value or premium, a debt

126 instrument that has a maturity date at least 5 years from the
127 closing date and a repayment schedule that is no greater than
128 level principal amortization over 5 years.

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

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

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

139 b. If the initial growth investment occurred during the
140 preceding calendar year, the average monthly number of full-time
141 high wage employment positions for the months during which the
142 initial growth investment was made through the end of the
143 preceding calendar year; and

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

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

150 (n) "Principal business operation" means the location or

151 locations where at least 60 percent of the business's employees
152 work or where the employees who are paid at least 60 percent of
153 the business's payroll are located. A business that agrees to
154 relocate or hire new employees using the proceeds of a growth
155 investment to establish its principal business operation in a
156 growth zone in the state is deemed to have its principal
157 business operations in the new location provided it satisfies
158 this definition within 180 days after receiving the growth
159 investment, unless the department agrees to 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, 2020, the department shall
163 accept applications for approval as a growth fund on a form
164 adopted by the department. The application must include the
165 following:

166 (a) The total investment authority sought by the
167 applicant.

168 (b) Evidence that:

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

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

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

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

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

200 (f) A signed affidavit from each investor certifying the

201 amount of investor contribution the investor will make.

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

206 (4) (a) Within 45 days after receiving a completed
207 application containing the information set forth in subsection
208 (3), the department shall approve or deny the application.

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

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

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

222 (a) The application is incomplete;

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

225 (c) The revenue impact assessment submitted under

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

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

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

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

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

251 (a) The applicant as a growth fund;
252 (b) The amount of the applicant's investment authority;
253 (c) The investor contributions required from each investor
254 that submitted an affidavit with the growth fund's application;
255 and
256 (d) The number of new annual jobs created and jobs
257 retained that will be required of the growth fund, as prorated,
258 based on the investment authority awarded to the growth fund.
259 (8) (a) Within 60 days after receiving the certification
260 issued under subsection (7), a growth fund shall collect all
261 investor contributions and collect additional investments of
262 cash that, when added to the investor contributions, at least
263 equal the growth fund's investment authority. Within 65 days
264 after receiving the certification issued under subsection (7), a
265 growth fund shall send to the department documentation that it
266 has collected the amounts described in this subsection. At least
267 10 percent of the growth fund's investment authority must
268 consist of equity investments contributed by affiliates of the
269 growth fund. The growth fund shall report to the department the
270 date on which the investor contributions and additional
271 investments of cash were collected.
272 (b) Upon receipt of the documentation required by
273 paragraph (a), the department shall provide a tax credit
274 certificate to each taxpayer who has made an investor
275 contribution in the amount of the investor contribution.

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

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

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

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

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

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

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

317 (a) The growth fund does not invest 100 percent of its
318 investment authority in growth investments in this state within
319 2 years of the closing date;

320 (b) The growth fund, after initially satisfying paragraph
321 (a), fails to maintain growth investments equal to 100 percent
322 of its investment authority until the sixth anniversary of the
323 closing date. For purposes of this paragraph, an investment is
324 maintained even if it is sold or repaid, so long as the growth
325 fund reinvests an amount equal to the capital returned or

326 recovered from the original investment, exclusive of any profits
327 realized, in other growth investments in this state within 12
328 months of the receipt of such capital. Amounts received
329 periodically by a growth fund shall be treated as continuously
330 invested in growth investments if the amounts are reinvested in
331 one or more growth investments by the end of the following
332 calendar year;

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

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

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

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

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

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

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

376 investment authority to new applicants.

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

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

398 (c) After its exit from the program in accordance with
399 paragraph (a), if the growth fund proposes to make a
400 distribution to its investors that, when added to all previous

401 distributions to its investors, exceeds its investment
402 authority, the growth fund shall remit to the department a
403 payment equal to the product of the proposed distribution and
404 the difference between one and a fraction, the numerator of
405 which is the aggregate number of new annual jobs created and
406 jobs retained reported to the department pursuant to subsection
407 (18) and the denominator of which is the number of new annual
408 jobs created and jobs retained as set forth in the growth fund's
409 certification. No payment is due if the aggregate number of new
410 annual jobs created and jobs retained as of the date of the
411 proposed distribution equal or exceed the number of new annual
412 jobs created and jobs retained as projected set forth in the
413 growth fund's certificate issued under subsection (7).

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

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

422 1. A bank statement evidencing each growth investment, if
423 not previously reported;

424 2. The name, location, and industry of each growth
425 business receiving a growth investment, including either the

426 determination letter set forth in subsection (12) or evidence
427 that the business qualified as a growth business at the time the
428 investment was made, if not previously reported;

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

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

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

440 6. The cumulative amount of growth investments made in
441 growth businesses; and

442 7. Any other information required by the department.

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

447 (19) The department:

448 (a) May adopt rules to implement the provisions of this
449 section.

450 (b) Shall adopt forms and notices to implement this

451 section.

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

456 (20) A growth fund that issues growth investment that has
457 been certified by the department shall be deemed a recipient of
458 state financial assistance under s. 215.97, the Florida Single
459 Audit Act. However, a growth business that receives a growth
460 fund investment is not a subrecipient for the purposes of s.
461 215.97.

462 (21) The provisions of this section apply only to tax
463 returns or reports originally due on or after January 1, 2021.

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

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