

HB467 INTRODUCED



1 AHWG7S-1
2 By Representatives Daniels, Clarke, Drummond, Tillman,
3 Jackson, Lawrence
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7 2023 Regular Session



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SYNOPSIS:

The Alabama Rural, Agribusiness, and Opportunity Zone Jobs Act, enacted in 2021, created a procedure for the certification of growth funds by the Alabama Innovation Corporation and authorized the Alabama Innovation Corporation to accept federal funds from the American Rescue Plan Act of 2021 and issue state matching capital to taxpayers who make investor contributions to a certified growth fund to make capital accessible to rural and minority owned businesses.

This bill would authorize the Alabama Innovation Corporation to issue additional state matching capital to certified growth funds, contingent upon a legislative appropriation of additional funds.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Rural, Agribusiness, and Opportunity Zone Jobs Act; to amend Sections 40-9H-2 and 40-9H-3, Code of Alabama 1975; to authorize the issuance of state matching capital to certified growth funds to make



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29 capital accessible to rural and minority owned businesses.

30 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

31 Section 1. Section 40-9H-2 and 40-9H-3, Code of Alabama
32 1975, are amended to read as follows:

33 "§40-9H-2

34 As used in this chapter, the following words shall have
35 the following meanings:

36 (1) AFFILIATE. An entity that directly, or indirectly
37 through one or more intermediaries, controls, is controlled
38 by, or is under common control with another entity. For the
39 purposes of this subdivision, an entity is controlled by
40 another entity if the controlling person holds, directly or
41 indirectly, the majority voting or ownership interest in the
42 controlled person or has control over the day-to-day
43 operations of the controlled person by contract or by law.

44 (2) AGRIBUSINESS. A business that earns a majority of
45 its revenues from either farming, forestry, biotechnology,
46 fisheries, or biofuels and the processing, manufacturing,
47 packaging, storage, distribution, marketing, and sales of
48 those products or commodities, or the design, creation,
49 manufacture, marketing, or sales of technology, equipment, or
50 supplies related to those businesses.

51 (3) CLOSING DATE. The date the department and the
52 growth fund execute the SSBCI loan agreement.

53 (4) DEPARTMENT. ~~The state body, department,~~
54 ~~subdivision, or agency authorized by the state to direct~~
55 ~~federal funds available under Subtitle C of Title III of the~~
56 ~~American Rescue Plan Act of 2021~~The Alabama Innovation



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57 Corporation.

58 (5) FOLLOW-ON CAPITAL. The sum of 50 percent of each
59 initial growth investment, subsequent growth investments made
60 to satisfy subdivision (a)(2) of Section 40-9H-5 and any
61 additional financing received by a growth business on or after
62 the date of the initial growth investment, including senior
63 debt, subordinate debt, mortgage debt, equipment financing,
64 mezzanine debt, convertible notes, revolving lines of credit,
65 letters of credit, capital leases, preferred equity,
66 participating preferred equity, convertible preferred equity,
67 common equity, warrants and simple agreements for future
68 equity, and any other financing approved by the department.

69 (6) FOLLOW-ON CAPITAL PERCENTAGE. Fifty percent
70 multiplied by a fraction, the numerator of which is the
71 aggregate follow-on capital reported to the department in
72 reports submitted pursuant to subsection (b) of Section
73 40-9H-6 and the denominator of which is 10 times the amount of
74 the SSBCI loan. The percentage may exceed 50 percent.

75 (7) GROWTH BUSINESS. A business to which all of the
76 following apply at the time of the initial investment in the
77 company by a growth fund:

78 a. Has fewer than 200 employees.

79 b. Has its principal business operations in one or more
80 growth zones in the state.

81 c. Is made in any of the following:

82 1. Any business in North American Industry

83 Classification System codes 11, 21, 22, 23, 31 through 33, 48
84 through 49, 54, or 62 or, if not engaged in those industries,



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85 the department determines that the investment will be
86 beneficial to the growth zone.

87 2. An agribusiness.

88 3. A minority owned business.

89 (8) GROWTH FUND. An entity certified by the department
90 under subsection (g) of Section 40-9H-3.

91 (9) GROWTH INVESTMENT. Any capital or equity investment
92 in a growth business or any loan to a growth business with a
93 stated maturity at least one year after the date of issuance,
94 provided that with respect to any loan to a growth business
95 secured by accounts receivable, inventory, real estate, or
96 other tangible property, the chief executive officer or
97 similar official of the growth business executes an affidavit
98 that the business sought and was denied similar financing from
99 a banking institution doing business in this state. Fifty
100 percent of a growth investment shall be comprised of a draw on
101 the SSBCI loan with the remaining 50 percent funded with the
102 growth fund's matching capital.

103 (10) GROWTH ZONE. A rural county of the state with less
104 than 50,000 in population pursuant to the 2020 Federal
105 Decennial Census, or a qualified opportunity zone as
106 designated pursuant to 26 U.S.C. § 1400Z-1 with a poverty rate
107 of at least 20 percent, or otherwise meeting the definition of
108 low-income community in 26 U.S.C. § 45D.

109 (11) HIGH WAGE EMPLOYMENT POSITION. An employment
110 position that is filled, pays a wage of at least 110 percent
111 of the county average as noted in the most recent quarterly
112 County Employment and Wages report by the Bureau of Labor



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113 Statistics of the United States Department of Labor, and
114 requires at least 35 hours of work per week or any other
115 period of time generally accepted by custom, industry, or
116 practice as full-time employment.

117 (12) INVESTMENT AUTHORITY. The amount stated on the
118 notice issued under subsection (g) of Section 40-9H-3
119 certifying the growth fund.

120 (13) JOBS RETAINED. The number of high wage employment
121 positions that existed before the initial growth investment
122 and for which the growth business's chief executive officer or
123 similar officer certifies that the high wage employment
124 position would have been eliminated but for the initial growth
125 investment. The retained jobs of a growth business shall be
126 calculated each year based on the monthly average of high wage
127 employment positions. The reported number of retained jobs may
128 not exceed the number reported on the initial report required
129 under subsection (a) of Section 40-9H-6.

130 (14) MANAGEMENT FEE. An amount equal to three percent
131 per annum of the growth fund's investment authority that
132 accrues annually, but shall not be paid until the growth fund
133 exits the program in accordance with subsection (e) of Section
134 40-9H-5.

135 (15) MATCHING CAPITAL. An amount of capital raised by
136 the growth fund as debt or equity and invested in growth
137 businesses. Matching capital shall only be considered debt of
138 the growth fund and eligible for repayment pursuant to
139 paragraph (e) (2)a. of Section 40-9H-5 if the growth fund
140 provides evidence of such direct or indirect debt to the



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141 department.

142 (16) MINORITY OWNED BUSINESS. A business that is more
143 than 50 percent owned by one or more individuals of
144 African-American, Asian, or Hispanic origin.

145 (17) NEW ANNUAL JOBS. Except as provided in paragraph
146 c., the term means the difference between paragraphs a. and b.
147 as follows:

148 a.1. The monthly average of high wage employment
149 positions for the preceding calendar year.

150 2. If the preceding calendar year contains the initial
151 growth investment, the monthly average of high wage employment
152 positions for the months including and after the initial
153 growth investment and before the end of the preceding calendar
154 year.

155 b. The number of high wage employment positions at the
156 growth business on the date of the initial growth investment.

157 c. If the amount calculated in subparagraph a.1. is
158 less than zero, the new annual jobs amount is equal to zero.

159 (18) NEW ANNUAL JOBS AND JOBS RETAINED PERCENTAGE.
160 Fifty percent multiplied by a fraction, the numerator of which
161 is the number of new annual jobs and jobs retained reported in
162 annual reports submitted to the department pursuant to
163 subsection (b) of Section 40-9H-6 and the denominator of which
164 is the number of new annual jobs and jobs retained set forth
165 in the growth fund's certification provided pursuant to
166 subsection (g) of Section 40-9H-3. The percentage may exceed
167 50 percent.

168 (19) PRINCIPAL BUSINESS OPERATIONS. The place or places



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169 where at least 60 percent of the business's employees work or
170 where employees that are paid at least 60 percent of the
171 business's payroll work. A business that has agreed to
172 relocate or hire new employees using the proceeds of a growth
173 investment to establish its principal business operations in a
174 growth zone in the state shall be deemed to have its principal
175 business operations in this new location, provided the
176 business satisfies this requirement within 180 days after
177 receiving the growth investment, unless the department agrees
178 to a later date.

179 (20) PROGRAM EXIT. The process described in subsection
180 (e) of Section 40-9H-5.

181 (21) SSBCI. The federal State Small Business Credit
182 Initiative pursuant to Subtitle C of Title III of the American
183 Rescue Plan of 2021.

184 (22) SSBCI FUND. The SSBCI Alabama Rural, Agribusiness,
185 and Opportunity Zone Jobs Act Account which is hereby
186 established.

187 (23) SSBCI FUNDING. Either of the following:

188 a. An amount equal to twenty-five million dollars
189 (\$25,000,000) of the State of Alabama's allocation of funds
190 pursuant to Subtitle C of Title III of the American Rescue
191 Plan Act of 2021 which shall be deposited in the SSBCI fund.

192 b. An amount up to twenty-five million dollars
193 (\$25,000,000) of monies appropriated to the SSBCI Alabama
194 Rural, Agribusiness, and Opportunity Zone Jobs Act Account.

195 (24) SSBCI LOAN. A loan made to a growth fund using
196 SSBCI funding. The department and the growth fund shall



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197 execute a loan agreement which shall provide for:

198 a. An interest rate of one percent interest compounding
199 annually which shall be due upon program exit or acceleration
200 pursuant to Section 40-9H-5.

201 b. Forgiveness at exit of a percentage of principal and
202 interest due on the SSBCI loan equal to the sum of the
203 follow-capital percentage and the new annual and jobs retained
204 percentage, provided forgiveness shall not be available with
205 respect to SSBCI loans accelerated pursuant to Section
206 40-9H-5.

207 c. Subordination to matching capital funded directly or
208 indirectly as debt, which subordination may be revoked
209 pursuant to Section 40-9H-5.

210 d. Draws in connection with growth investments in
211 accordance with subsection (c) of Section 40-9H-4."

212 "§40-9H-3

213 (a) Upon receipt of an allocation of funds pursuant to
214 Subtitle C of Title III of the American Rescue Plan Act of
215 2021, the department shall cause the SSBCI funding to be
216 deposited in the SSBCI fund.

217 (b) Within 30 days of the approval of the state's
218 application for federal funds pursuant to Subtitle C of Title
219 III of the American Rescue Plan Act of 2021, or within 90 days
220 of receiving an appropriation of funds, the department shall
221 accept applications for certification as a growth fund on a
222 form prescribed by the department. The application shall
223 include all of the following:

224 (1) The total investment authority and SSBCI loan



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225 sought by the applicant not to exceed fifteen million dollars
226 (\$15,000,000) and seven million five hundred thousand dollars
227 (\$7,500,000), respectively.

228 (2) Evidence that the applicant, or an affiliate of the
229 applicant, is licensed as a rural business investment company
230 under 7 U.S.C. § 2009cc or as a small business investment
231 company under 15 U.S.C. § 681, including a certificate
232 executed by an executive officer of the applicant attesting
233 that the license remains in effect and has not been revoked,
234 and that at least one principal in a rural business investment
235 company or a small business investment company is, and has
236 been for at least five years, an officer or employee of the
237 applicant or an affiliate of the applicant on the date the
238 application is submitted.

239 (3) Evidence that as of the date the application is
240 submitted, the applicant or affiliates of the applicant have
241 invested at least fifty million dollars (\$50,000,000) in, or
242 lent at least fifty million dollars (\$50,000,000) to,
243 nonpublic companies located in nonmetropolitan counties, as
244 defined by the Office of Management and Budget within the
245 Office of the President of the United States, on the basis of
246 county or county-equivalent units and invested at least
247 twenty-five million dollars (\$25,000,000) in, or lent at least
248 twenty-five million dollars (\$25,000,000) to, minority owned
249 businesses.

250 (4) An estimate of the number of aggregate new annual
251 jobs that will be created and jobs retained in this state
252 because of the applicant's growth investments.



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253 (5) A business plan that includes a revenue impact
254 assessment projecting state and local tax revenue, as well as
255 reduced state expenditures, to be generated by the applicant's
256 proposed growth investments prepared by a nationally
257 recognized third-party independent economic forecasting firm
258 using a dynamic economic forecasting model that analyzes the
259 applicant's business plan over the 10 years following the date
260 the application is submitted to the department.

261 (6) A letter of credit issued to the applicant from a
262 depository institution equal to at least 50 percent of the
263 amount of investment authority requested or similar evidence
264 that the applicant has secured matching capital equal to such
265 amount.

266 (7) A nonrefundable application fee of twenty thousand
267 dollars (\$20,000) payable to the department.

268 (8) An education and marketing plan to educate growth
269 businesses regarding the availability of funds and
270 requirements for participation pursuant to this chapter.

271 (c) Within 30 days after receipt of a completed
272 application containing the information set forth in subsection
273 (b), the department shall grant or deny the application. The
274 department shall deem applications received on the same day to
275 have been received simultaneously. The department shall
276 approve investment authority up to an amount that would allow
277 not more than fifty million dollars (\$50,000,000) of
278 investment authority and twenty-five million dollars
279 (\$25,000,000) of SSBCI loans. If requests for investment
280 authority and SSBCI loans exceed this limitation, the



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281 department shall proportionally reduce the investment
282 authority and SSBCI loan for each approved application as
283 necessary to avoid exceeding the limit.

284 (d) The department shall deny an application if any of
285 the following are true:

286 (1) The application is incomplete.

287 (2) The applicant does not satisfy all the criteria
288 described in subdivisions (2), (3), (6), and (7) of subsection
289 (b).

290 (3) The revenue impact assessment submitted under
291 subdivision (b) (5) does not demonstrate that the applicant's
292 business plan will result in an economic impact on this state
293 over a 10-year period that exceeds the growth fund's SSBCI
294 loan.

295 (4) The department has already approved the maximum
296 amount of investment authority and SSBCI loans allowed under
297 subsection (c).

298 (e) If the department denies an application, the
299 applicant may provide additional information to the department
300 to complete, clarify, or cure defects in the application
301 identified by the department, except for failure to comply
302 with subdivision (b) (6), within 15 days of the notice of
303 denial for reconsideration and determination. The department
304 shall review and reconsider the applications for which
305 additional information is provided within the 15-day period
306 within 30 days and, if approved, the application shall be
307 considered complete as of its original submission date.

308 (f) The department may not reduce the requested



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309 investment authority or deny a growth fund application for
310 reasons other than those described in subsections (c) and (d).

311 (g) Upon approval of an application, the department
312 shall certify the applicant as a growth fund, specifying the
313 amount of the applicant's investment authority, SSBCI loan,
314 aggregate required matching capital, and the number of new
315 annual jobs and jobs retained that will be required of the
316 growth fund, which shall match those projected in the growth
317 fund's application, prorated on the basis of the investment
318 authority awarded to the growth fund.

319 (h) An approved growth fund may apply for additional
320 investment authority and SSBCI loans once it has invested 100
321 percent of its outstanding investment authority."

322 Section 2. This act shall become effective on the first
323 day of the third month following its passage and approval by
324 the Governor, or its otherwise becoming law, but only shall
325 become operative upon the appropriation by the Legislature of
326 a minimum of twelve million five hundred thousand dollars
327 (\$12,500,000) appropriated to the SSBCI Alabama Rural,
328 Agribusiness, and Opportunity Zone Jobs Act Account for the
329 fiscal year 2023-2024.