

SB315 ENROLLED



1 SB315
2 MF9KWW1-2
3 By Senator Singleton
4 RFD: Finance and Taxation General Fund
5 First Read: 09-Apr-24



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1 Enrolled, An Act,

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4 Relating to the Alabama Rural, Agribusiness, and
5 Opportunity Zone Jobs Act; to amend Sections 40-9H-2 through
6 40-9H-5, and 40-9H-7, Code of Alabama 1975; to authorize the
7 issuance of state matching capital to certified growth funds
8 to make capital accessible to rural and minority owned
9 businesses; to repeal Section 40-9H-9, Code of Alabama 1975,
10 which provides legislative intent relating to funds from the
11 American Rescue Plan Act of 2021; and to make the act
12 operative upon a specified appropriation.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Section 40-9H-2, 40-9H-3, 40-9H-4, 40-9H-5,
15 and 40-9H-7, Code of Alabama 1975, are amended to read as
16 follows:

17 "§40-9H-2

18 As used in this chapter, the following words shall have
19 the following meanings:

20 (1) AFFILIATE. An entity that directly, or indirectly
21 through one or more intermediaries, controls, is controlled
22 by, or is under common control with another entity. For the
23 purposes of this subdivision, an entity is controlled by
24 another entity if the controlling person holds, directly or
25 indirectly, the majority voting or ownership interest in the
26 controlled person or has control over the day-to-day
27 operations of the controlled person by contract or by law.

28 (2) AGRIBUSINESS. A business that earns a majority of



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29 its revenues from either farming, forestry, biotechnology,
30 fisheries, or biofuels and the processing, manufacturing,
31 packaging, storage, distribution, marketing, and sales of
32 those products or commodities, or the design, creation,
33 manufacture, marketing, or sales of technology, equipment, or
34 supplies related to those businesses.

35 (3) CLOSING DATE. The date the department and the
36 growth fund execute the ~~SSBCI~~ loan agreement.

37 (4) DEPARTMENT. ~~The state body, department,~~
38 ~~subdivision, or agency authorized by the state to direct~~
39 ~~federal funds available under Subtitle C of Title III of the~~
40 ~~American Rescue Plan Act of 2021~~ The Alabama Innovation
41 Corporation.

42 (5) FOLLOW-ON CAPITAL. The sum of 50 percent of each
43 initial growth investment, subsequent growth investments made
44 to satisfy subdivision (a)(2) of Section 40-9H-5 and any
45 additional financing received by a growth business on or after
46 the date of the initial growth investment, including senior
47 debt, subordinate debt, mortgage debt, equipment financing,
48 mezzanine debt, convertible notes, revolving lines of credit,
49 letters of credit, capital leases, preferred equity,
50 participating preferred equity, convertible preferred equity,
51 common equity, warrants and simple agreements for future
52 equity, and any other financing approved by the department.

53 (6) FOLLOW-ON CAPITAL PERCENTAGE. Fifty percent
54 multiplied by a fraction, the numerator of which is the
55 aggregate follow-on capital reported to the department in
56 reports submitted pursuant to subsection (b) of Section



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57 40-9H-6 and the denominator of which is 10 times the amount of
58 the ~~SSBCI~~ loan. The percentage may exceed 50 percent.

59 ~~(7)~~ (9) GROWTH BUSINESS. A business to which all of the
60 following apply at the time of the initial investment in the
61 company by a growth fund:

62 a. Has fewer than 200 employees.

63 b. Has its principal business operations in one or more
64 growth zones in the state.

65 c. Is made in any of the following:

66 1. Any business in North American Industry
67 Classification System codes 11, 21, 22, 23, 31 through 33, 48
68 through 49, 54, or 62 or, if not engaged in those industries,
69 the department determines that the investment will be
70 beneficial to the growth zone.

71 2. An agribusiness.

72 3. A minority owned business.

73 ~~(8)~~ (10) GROWTH FUND. An entity certified by the
74 department under subsection (g) of Section 40-9H-3.

75 ~~(9)~~ (11) GROWTH INVESTMENT. Any capital or equity
76 investment in a growth business or any loan to a growth
77 business with a stated maturity at least one year after the
78 date of issuance, provided that with respect to any loan to a
79 growth business secured by accounts receivable, inventory,
80 real estate, or other tangible property, the chief executive
81 officer or similar official of the growth business executes an
82 affidavit that the business sought and was denied similar
83 financing from a banking institution doing business in this
84 state. Fifty percent of a growth investment shall be comprised



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85 of a draw on the ~~SSBCI~~ loan with the remaining 50 percent
86 funded with the growth fund's matching capital.

87 ~~(10)~~ (12) GROWTH ZONE. A rural county of the state with
88 less than 50,000 in population pursuant to the 2020 Federal
89 Decennial Census, or a qualified opportunity zone as
90 designated pursuant to 26 U.S.C. § 1400Z-1 with a poverty rate
91 of at least 20 percent, or otherwise meeting the definition of
92 low-income community in 26 U.S.C. § 45D.

93 ~~(11)~~ (13) HIGH WAGE EMPLOYMENT POSITION. An employment
94 position that is filled, pays a wage of at least 110 percent
95 of the county average as noted in the most recent quarterly
96 County Employment and Wages report by the Bureau of Labor
97 Statistics of the United States Department of Labor, and
98 requires at least 35 hours of work per week or any other
99 period of time generally accepted by custom, industry, or
100 practice as full-time employment.

101 ~~(12)~~ (14) INVESTMENT AUTHORITY. The amount stated on the
102 notice issued under subsection (g) of Section 40-9H-3
103 certifying the growth fund.

104 ~~(13)~~ (15) JOBS RETAINED. The number of high wage
105 employment positions that existed before the initial growth
106 investment and for which the growth business's chief executive
107 officer or similar officer certifies that the high wage
108 employment position would have been eliminated but for the
109 initial growth investment. The retained jobs of a growth
110 business shall be calculated each year based on the monthly
111 average of high wage employment positions. The reported number
112 of retained jobs may not exceed the number reported on the



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113 initial report required under subsection (a) of Section
114 40-9H-6.

115 ~~(14)~~ (17) MANAGEMENT FEE. An amount equal to three
116 percent per annum of the growth fund's investment authority
117 that accrues annually, but shall not be paid until the growth
118 fund exits the program in accordance with subsection (e) of
119 Section 40-9H-5.

120 ~~(15)~~ (18) MATCHING CAPITAL. An amount of capital raised
121 by the growth fund as debt or equity and invested in growth
122 businesses. Matching capital shall only be considered debt of
123 the growth fund and eligible for repayment pursuant to
124 paragraph (e) (2)a. of Section 40-9H-5 if the growth fund
125 provides evidence of such direct or indirect debt to the
126 department.

127 ~~(16)~~ (19) MINORITY OWNED BUSINESS. A business that is
128 more than 50 percent owned by one or more individuals of
129 African-American, Asian, or Hispanic origin.

130 ~~(17)~~ (20) NEW ANNUAL JOBS. Except as provided in
131 paragraph c., the term means the difference between paragraphs
132 a. and b. as follows:

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

135 2. If the preceding calendar year contains the initial
136 growth investment, the monthly average of high wage employment
137 positions for the months including and after the initial
138 growth investment and before the end of the preceding calendar
139 year.

140 b. The number of high wage employment positions at the



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141 growth business on the date of the initial growth investment.

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

144 ~~(18)~~ (21) NEW ANNUAL JOBS AND JOBS RETAINED PERCENTAGE.

145 Fifty percent multiplied by a fraction, the numerator of which
146 is the number of new annual jobs and jobs retained reported in
147 annual reports submitted to the department pursuant to
148 subsection (b) of Section 40-9H-6 and the denominator of which
149 is the number of new annual jobs and jobs retained set forth
150 in the growth fund's certification provided pursuant to
151 subsection (g) of Section 40-9H-3. The percentage may exceed
152 50 percent.

153 ~~(19)~~ (22) PRINCIPAL BUSINESS OPERATIONS. The place or
154 places where at least 60 percent of the business's employees
155 work or where employees that are paid at least 60 percent of
156 the business's payroll work. A business that has agreed to
157 relocate or hire new employees using the proceeds of a growth
158 investment to establish its principal business operations in a
159 growth zone in the state shall be deemed to have its principal
160 business operations in this new location, provided the
161 business satisfies this requirement within 180 days after
162 receiving the growth investment, unless the department agrees
163 to a later date.

164 ~~(20)~~ (23) PROGRAM EXIT. The process described in
165 subsection (e) of Section 40-9H-5.

166 ~~(21)~~ ~~SSBCI. The federal State Small Business Credit~~
167 ~~Initiative pursuant to Subtitle C of Title III of the American~~
168 ~~Rescue Plan of 2021.~~



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169 ~~(22)~~ (7) ~~SSBCI-FUND~~. The ~~SSBCI~~-Alabama Rural,
170 Agribusiness, and Opportunity Zone Jobs Act Account which is
171 hereby established.

172 ~~(23)~~ (8) ~~SSBCI-FUNDING~~.

173 ~~An amount equal to twenty-five million dollars~~
174 ~~(\$25,000,000) of the State of Alabama's allocation of funds~~
175 ~~pursuant to Subtitle C of Title III of the American Rescue~~
176 ~~Plan Act of 2021 which shall be deposited in the SSBCI fund.~~

177 An amount up to twenty-five million dollars
178 (\$25,000,000) of monies appropriated to the Alabama Rural,
179 Agribusiness, and Opportunity Zone Jobs Act Account.

180 ~~(24)~~ (16) ~~SSBCI-LOAN~~. A loan made to a growth fund using
181 ~~SSBCI~~-funding. The department and the growth fund shall
182 execute a loan agreement which shall provide for:

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

186 b. Forgiveness at exit of a percentage of principal and
187 interest due on the ~~SSBCI~~-loan equal to the sum of the
188 follow-capital percentage and the new annual and jobs retained
189 percentage, provided forgiveness shall not be available with
190 respect to ~~SSBCI~~-loans accelerated pursuant to Section
191 40-9H-5.

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

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



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197 "§40-9H-3

198 ~~(a) Upon receipt of an allocation of funds pursuant to~~
199 ~~Subtitle C of Title III of the American Rescue Plan Act of~~
200 ~~2021, the department shall cause the SSBCI funding to be~~
201 ~~deposited in the SSBCI fund.~~

202 ~~(b) Within 30 days of the approval of the state's~~
203 ~~application for federal funds pursuant to Subtitle C of Title~~
204 ~~III of the American Rescue Plan Act of 2021,~~ (a) Within 90 days
205 of receiving an appropriation of funds, the department shall
206 accept applications for certification as a growth fund on a
207 form prescribed by the department. The application shall
208 include all of the following:

209 (1) The total investment authority and ~~SSBCI~~-loan
210 sought by the applicant not to exceed fifteen million dollars
211 (\$15,000,000) and seven million five hundred thousand dollars
212 (\$7,500,000), respectively.

213 (2) Evidence that the applicant, or an affiliate of the
214 applicant, is licensed as a rural business investment company
215 under 7 U.S.C. § 2009cc or as a small business investment
216 company under 15 U.S.C. § 681, including a certificate
217 executed by an executive officer of the applicant attesting
218 that the license remains in effect and has not been revoked,
219 and that at least one principal in a rural business investment
220 company or a small business investment company is, and has
221 been for at least five years, an officer or employee of the
222 applicant or an affiliate of the applicant on the date the
223 application is submitted.

224 (3) Evidence that as of the date the application is



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225 submitted, the applicant or affiliates of the applicant have
226 invested at least fifty million dollars (\$50,000,000) in, or
227 lent at least fifty million dollars (\$50,000,000) to,
228 nonpublic companies located in nonmetropolitan counties, as
229 defined by the Office of Management and Budget within the
230 Office of the President of the United States, on the basis of
231 county or county-equivalent units and invested at least
232 twenty-five million dollars (\$25,000,000) in, or lent at least
233 twenty-five million dollars (\$25,000,000) to, minority owned
234 businesses.

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

238 (5) A business plan that includes a revenue impact
239 assessment projecting state and local tax revenue, as well as
240 reduced state expenditures, to be generated by the applicant's
241 proposed growth investments prepared by a nationally
242 recognized third-party independent economic forecasting firm
243 using a dynamic economic forecasting model that analyzes the
244 applicant's business plan over the 10 years following the date
245 the application is submitted to the department.

246 (6) A letter of credit issued to the applicant from a
247 depository institution equal to at least 50 percent of the
248 amount of investment authority requested or similar evidence
249 that the applicant has secured matching capital equal to such
250 amount.

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



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

256 ~~(e)~~ (b) Within 30 days after receipt of a completed
257 application containing the information set forth in subsection
258 ~~(b)~~ (a), the department shall grant or deny the application.
259 The department shall deem applications received on the same
260 day to have been received simultaneously. The department shall
261 approve investment authority up to an amount that would allow
262 not more than fifty million dollars (\$50,000,000) of
263 investment authority and twenty-five million dollars
264 (\$25,000,000) of ~~SSBCI~~ loans. If requests for investment
265 authority and ~~SSBCI~~ loans exceed this limitation, the
266 department shall proportionally reduce the investment
267 authority and ~~SSBCI~~ loan for each approved application as
268 necessary to avoid exceeding the limit.

269 ~~(d)~~ (c) The department shall deny an application if any
270 of the following are true:

271 (1) The application is incomplete.

272 (2) The applicant does not satisfy all the criteria
273 described in subdivisions (a)(2), (a)(3), (a)(6), and (a)(7)
274 of ~~subsection (b)~~.

275 (3) The revenue impact assessment submitted under
276 subdivision ~~(b)~~ (a)(5) does not demonstrate that the
277 applicant's business plan will result in an economic impact on
278 this state over a 10-year period that exceeds the growth
279 fund's ~~SSBCI~~ loan.

280 (4) The department has already approved the maximum



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281 amount of investment authority and ~~SSBCI~~ loans allowed under
282 subsection ~~(e)~~ (b).

283 ~~(e)~~ (d) If the department denies an application, the
284 applicant may provide additional information to the department
285 to complete, clarify, or cure defects in the application
286 identified by the department, except for failure to comply
287 with subdivision ~~(b)~~ (a) (6), within 15 days of the notice of
288 denial for reconsideration and determination. The department
289 shall review and reconsider the applications for which
290 additional information is provided within the 15-day period
291 within 30 days and, if approved, the application shall be
292 considered complete as of its original submission date.

293 ~~(f)~~ (e) The department may not reduce the requested
294 investment authority or deny a growth fund application for
295 reasons other than those described in subsections ~~(e)~~ and
296 ~~(d)~~ (b) and (c).

297 ~~(g)~~ (f) Upon approval of an application, the department
298 shall certify the applicant as a growth fund, specifying the
299 amount of the applicant's investment authority, ~~SSBCI~~ loan,
300 aggregate required matching capital, and the number of new
301 annual jobs and jobs retained that will be required of the
302 growth fund, which shall match those projected in the growth
303 fund's application, prorated on the basis of the investment
304 authority awarded to the growth fund.

305 ~~(h)~~ (g) An approved growth fund may apply for additional
306 investment authority and ~~SSBCI~~ loans once it has invested 100
307 percent of its outstanding investment authority."

308 "§40-9H-4



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309 (a) Within 30 days of certification of a growth fund,
310 the department shall enter into the ~~SSBCI~~-loan agreement with
311 the growth fund and segregate for draws by the growth fund in
312 the ~~SSBCI~~-fund an amount of ~~SSBCI~~-funding equal to the ~~SSBCI~~
313 loan awarded to such growth fund.

314 (b) A growth fund, before making a growth investment,
315 shall request from the department a written opinion as to
316 whether the business in which it proposes to invest satisfies
317 the definition of a growth business. The department, not later
318 than 15 business days after the date of receipt of the
319 request, shall notify the growth fund of its determination. If
320 the department fails to notify the growth fund of its
321 determination within 15 business days, the business in which
322 the growth fund proposes to invest shall be considered a
323 growth business. Each request for a written opinion shall be
324 accompanied by a five hundred dollar (\$500) opinion fee
325 payable to the department.

326 (c) At least five business days prior to a growth
327 investment, a growth fund shall make a draw request on the
328 ~~SSBCI~~-loan to the department. The draw on the ~~SSBCI~~-loan shall
329 not exceed 50 percent of the proposed growth investment. At
330 least two business days prior to a growth investment, a growth
331 fund shall notify the department of the date of the closing of
332 the growth investment and the department shall transfer the
333 amount of draw requested from the ~~SSBCI~~-fund to an account
334 designated by the growth fund on the following day. The growth
335 fund shall return the proceeds of the draw if the growth
336 investment is not made within the three business days of



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337 receipt of the draw unless the return is waived by the
338 department."

339 "§40-9H-5

340 (a) A growth fund shall forfeit its management fee, the
341 ~~SSBCI~~ loan shall be immediately due and its subordination
342 immediately revoked, and remaining draws on the ~~SSBCI~~ loan
343 shall be forfeited if:

344 (1) Within 12 months of the closing date:

345 a. The growth fund does not invest 100 percent of its
346 investment authority in growth investments in this state, of
347 which at least 25 percent shall be invested in agribusiness
348 and at least 25 percent shall be invested in minority owned
349 businesses, and of which at least 50 percent shall be invested
350 in growth businesses located in rural areas and at least 25
351 percent shall be invested in growth businesses located in
352 qualified opportunity zones.

353 b. With respect to awards of investment authority less
354 than seven million five hundred thousand dollars (\$7,500,000),
355 the growth fund does not invest 100 percent of its investment
356 authority in this state, of which at least 50 percent of
357 growth investments shall be made in agribusiness or minority
358 owned businesses and at least 75 percent of growth investments
359 shall be made in rural areas or opportunity zones.

360 (2) The growth fund, after satisfying subdivision (1),
361 fails to maintain growth investments equal to 100 percent of
362 its investment authority until the sixth anniversary of the
363 closing date in accordance with the levels set forth in
364 subdivision (1). For the purposes of this subdivision, a



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365 growth investment is maintained even if it is sold or repaid
366 so long as the growth fund reinvests an amount equal to the
367 capital returned or recovered from the original investment,
368 exclusive of any profits realized, in other growth investments
369 in this state within 12 months of the receipt of the capital.
370 Amounts received periodically by a growth fund shall be
371 treated as continuously invested in growth investments if the
372 amounts are reinvested in one or more growth investments by
373 the end of the following calendar year.

374 (3) The growth fund, before program exit, makes a
375 distribution or payment that results in the growth fund having
376 less than 100 percent of its investment authority invested in
377 growth investments in this state or available for investment
378 in growth investments and held in cash and other marketable
379 securities, or makes a distribution or payment to an equity
380 holder, other than to fund payments with respect to matching
381 capital funded indirectly as debt, without consent of the
382 department.

383 (4) The growth fund makes a growth investment in a
384 growth business that directly or indirectly through an
385 affiliate owns, has the right to acquire an ownership interest
386 in, makes a loan to, or makes an investment in the growth
387 fund, an affiliate of the growth fund, or an investor in the
388 growth fund. This subdivision does not apply to investments in
389 publicly traded securities by a growth business or an owner or
390 affiliate of the growth business. For purposes of this
391 subdivision, a growth fund shall not be considered an
392 affiliate of a growth business solely because of its growth



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393 investment.

394 (b) The maximum amount of growth investments in a
395 growth business, including amounts invested in affiliates of
396 the growth business, that may be counted towards its
397 satisfaction of the requirements of subdivisions (a)(1) and
398 (2) is the greater of three million dollars (\$3,000,000) or 20
399 percent of its total investment authority, exclusive of repaid
400 or redeemed growth investments.

401 (c) Upon violation of this section, the department
402 shall notify the growth fund. The growth fund shall have 90
403 days from the date the notice was received to correct any
404 violation outlined in the notice to the satisfaction of the
405 department and to avoid the penalties set forth in subsection
406 (a).

407 (d) If an ~~SSBCI~~ loan is accelerated, the remaining
408 draws on the ~~SSBCI~~ loan and associated investment authority
409 shall not count toward the limit on the ~~SSBCI~~ loans and total
410 investment authority described by subsection (c) of Section
411 40-9H-3. The department shall first award reverted investment
412 authority and ~~SSBCI~~ loans on a pro rata basis to each growth
413 fund that was awarded less than the amount requested in an
414 application. The department may award any remaining investment
415 authority and ~~SSBCI~~ loans to new applicants.

416 (e) (1) On or after the seventh anniversary of the
417 closing date, a growth fund may apply to the department to
418 exit the program and no longer be subject to regulation except
419 as set forth in subdivision (2). The application shall include
420 a calculation of the follow-on percentage and the new jobs and



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421 retained jobs percentage. The department shall respond to the
422 application within 30 days of receipt. In evaluating the
423 application, the fact that the ~~SSBCI~~ loan has not been
424 violated and that the growth fund has not received a notice of
425 revocation that has not been cured under subsection (c) shall
426 be sufficient evidence to prove that the growth fund is
427 eligible for exit. The department may not unreasonably deny an
428 application submitted under this subsection. If the
429 application is denied, the notice shall include the reasons
430 for the determination.

431 (2) On or after an exit under this subsection, the
432 growth fund may make distributions and payments as follows:

433 a. First, to pay principal and interest on matching
434 capital funded directly or indirectly as debt.

435 b. Second, to pay management fees unless prohibited
436 under this section.

437 c. Third, to pay any principal and interest on the
438 ~~SSBCI~~ loan not deemed to be forgiven pursuant to paragraph
439 (24)b. of Section 40-9H-2.

440 d. Fourth, to make distributions to its equity
441 holders."

442 "§40-9H-7

443 The department shall report to the Legislature
444 beginning in ~~2023~~2026, pursuant to Section 40-1-50 and rules
445 adopted by the Department of Revenue, providing an assessment
446 of the incentives allowed in this chapter."

447 Section 2. Section 40-9H-9, Code of Alabama 1975,
448 providing legislative intent for use of certain federal funds



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449 under the American Rescue Plan Act of 2021, is repealed.

450 Section 3. This act shall become effective on the first
451 day of the third month following its passage and approval by
452 the Governor, or its otherwise becoming law, but only shall
453 become operative upon the appropriation by the Legislature of
454 a minimum of twelve million five hundred thousand dollars
455 (\$12,500,000) appropriated to the Alabama Rural, Agribusiness,
456 and Opportunity Zone Jobs Act Account for the fiscal year
457 2024-2025.



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB315
Senate 23-Apr-24
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 07-May-24

By: Senator Singleton