

House Bill 314

By: Representatives Shaw of the 176<sup>th</sup>, Powell of the 171<sup>st</sup>, England of the 116<sup>th</sup>, Trammell of the 132<sup>nd</sup>, and Watson of the 172<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to  
2 general provisions regarding insurance, so as to establish qualified low-income community  
3 investment; to provide for a short title; to provide for definitions; to provide that certain  
4 entities may earn credit against the entity's state tax liability; to disallow refundability and  
5 sale on the open market of claimed credits; to provide for certification of qualified capital  
6 investments; to provide for recapture of credit claimed under certain circumstances; to  
7 provide for a request of determination for eligibility; to provide for reporting; to provide for  
8 related matters; to provide for an effective date and applicability; to repeal conflicting laws;  
9 and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general  
13 provisions regarding insurance, is amended by adding a new Code section to read as follows:

14 "33-1-25.

15 (a) This Code section shall be known and may be cited as the 'Georgia Agribusiness and  
16 Rural Jobs Act.'

17 (b) As used in this Code section, the term:

18 (1) 'Affiliate' means an entity that directly, or indirectly through one or more  
19 intermediaries, controls, or is controlled by, or is under common control with another  
20 entity. For the purposes of this Code section, an entity is 'controlled by' another entity  
21 if the controlling entity holds, directly or indirectly, the majority voting or ownership  
22 interest in the controlled entity or has control over the day-to-day operations of the  
23 controlled entity by contract or by law.

24 (2) 'Applicable percentage' means 0 percent for the first two credit allowance dates and  
25 15 percent for the next four credit allowance dates.

- 26 (3) 'Capital investment' means any equity investment in a rural fund by a rural investor  
27 or a long-term debt security issued by a rural fund to a rural investor that:
- 28 (A) Is acquired after the effective date of this Code section at its original issuance  
29 solely in exchange for cash;
- 30 (B) Has 100 percent of its cash purchase price used by the rural fund to make eligible  
31 investments in eligible businesses located in this state by the second anniversary of the  
32 initial credit allowance date; and
- 33 (C) Is designated by the rural fund as a capital investment under this Code section and  
34 is certified by the department pursuant to subsection (e) of this Code section. This term  
35 shall include any capital investment that does not meet the provisions of subsection  
36 (e)(1)(A) of this Code section if such investment was a capital investment in the hands  
37 of a prior holder.
- 38 (4) 'Credit allowance date' mean the date on which a capital investment is made and each  
39 of the five anniversary dates of such date thereafter.
- 40 (5) 'Department' means the Department of Community Affairs.
- 41 (6) 'Eligible business' means a business that, at the time of the initial eligible investment  
42 in the company:
- 43 (A) Has less than 250 employees; and
- 44 (B)(i) Has its principal business operations in one or more rural areas in this state; or  
45 (ii) Produces or provides any goods or services normally used by farmers, ranchers,  
46 or producers and harvesters of aquatic products in their business operations, or to  
47 improve the welfare or livelihood of such persons, or is involved in the processing  
48 and marketing of agricultural products, farm supplies, and input suppliers, or is  
49 engaged in agribusiness as defined by the United States Department of Agriculture.  
50 Any business which is classified as an eligible business at the time of the initial  
51 investment in said business by a rural fund shall remain classified as an eligible  
52 business and may receive follow-on investments from any rural fund, and such  
53 follow-on investments shall be eligible investments even though such business may  
54 not meet the definition of an eligible business at the time of such follow-on  
55 investments.
- 56 (7) 'Eligible distribution' means:
- 57 (A) A distribution of cash to one or more equity owners of a rural investor to fully or  
58 partially offset a projected increase in the owner's federal or state tax liability, including  
59 any penalties and interest, related to the owner's ownership, management, or operation  
60 of the rural investor;
- 61 (B) A distribution of cash as payment of interest and principal on the debt of the rural  
62 investor or rural fund;

- 63 (C) A distribution of cash related to the reasonable costs and expenses of forming,  
64 syndicating, managing and operating the rural investor or the rural fund; or
- 65 (D) A return of equity to affiliates of a rural investor or rural fund. Such distributions  
66 may include reasonable and necessary fees paid for professional services, including  
67 legal and accounting services, related to the formation and operation of the rural fund  
68 and an annual management fee to the extent it does not exceed 2 percent of the rural  
69 fund's eligible investment authority.
- 70 (8) 'Eligible investment' means any capital investment in an eligible business or any loan  
71 to an eligible business with a stated maturity date of at least one year after the date of  
72 issuance; provided that, with respect to any one eligible business, the maximum amount  
73 of eligible investments made in such business by one or more rural funds, on a collective  
74 basis with all of the businesses' affiliates, with the proceeds of capital investments shall  
75 be the greater of 20 percent of the rural fund's capital investment authority or \$6.5  
76 million, exclusive of eligible investments made with repaid or redeemed eligible  
77 investments or interest or profits realized thereon.
- 78 (9) 'Long-term debt security' means any debt instrument issued by a rural fund to a rural  
79 investor with an original maturity date of at least six years from the date of its issuance.
- 80 (10) 'Principal business operations' means the location where at least 60 percent of a  
81 business's employees work or where employees who are paid at least 60 percent of such  
82 business's payroll work. A business that has agreed to relocate employees using the  
83 proceeds of a qualified low-income community investment to establish its principal  
84 business operations in a new location shall be deemed to have its principal business  
85 operations in such new location if it satisfies these requirements no later than 180 days  
86 after receiving a qualified low-income community investment.
- 87 (11) 'Purchase price' means the amount paid to the rural fund that issues a capital  
88 investment which shall not exceed the amount of capital investment authority certified  
89 pursuant to subsection (e) of this Code section.
- 90 (12) 'Rural area' means any county of this state that has a population of less than 75,000  
91 according to the latest decennial census of the United States.
- 92 (13) 'Rural fund' means an entity certified by the department under subsection (e) of this  
93 Code section.
- 94 (14) 'Rural investor' means an entity that makes a capital investment in a rural fund.
- 95 (15) 'State tax liability' means any liability incurred by any entity under Code Sections  
96 33-3-26 and 33-8-4 or Code Sections 48-7-21 and 48-7-27, or, if such taxes are  
97 eliminated or reduced, the term shall also mean any tax liability imposed on an entity or  
98 other person that had tax liability under the laws of this state.

99 (c) Upon making a capital investment in a rural fund, a rural investor earns a vested right  
100 to a credit against such entity's state tax liability that may be utilized on each credit  
101 allowance date of such capital investment in an amount equal to the applicable percentage  
102 for such credit allowance date multiplied by the purchase price paid to the rural fund for  
103 the capital investment. The amount of the credit claimed by a rural investor shall not  
104 exceed the amount of such entity's state tax liability for the tax year for which the credit is  
105 claimed. Any amount of credit that a rural investor is prohibited from claiming in a taxable  
106 year as a result of this Code section may be carried forward for use in any subsequent  
107 taxable year. It is the intent of this Act that a rural investor claiming a credit under this  
108 Code section is not required to pay any additional tax that may arise as a result of claiming  
109 such credit.

110 (d) No credit claimed under this Code section shall be refundable or saleable on the open  
111 market. Credits earned by or allocated to a partnership, limited liability company, or  
112 S-corporation may be allocated to the partners, members, or shareholders of such entity for  
113 their direct use in accordance with the provisions of any agreement among such partners,  
114 members, or shareholders, and a rural fund must notify the department of the names of the  
115 entities that are eligible to utilize credits pursuant to an allocation of credits or a change in  
116 allocation of credits or due to a transfer of a capital investment upon such allocation,  
117 change, or transfer. Such allocation shall be not considered a sale for purposes of this Code  
118 section.

119 (e)(1) A rural fund that seeks to have an equity investment or long-term debt security  
120 certified as a capital investment and eligible for credits under this Code section shall  
121 apply to the department. The department shall begin accepting applications within 90  
122 days of the effective date of this Act. The rural fund shall include the following:

123 (A) The amount of capital investment authority requested;

124 (B) A copy of the applicant's or an affiliate of the applicant's license as a rural business  
125 investment company under 7 U.S.C. Section 2009cc or as a small business investment  
126 company under 15 U.S.C. Section 681 and a certificate executed by an executive officer  
127 of the applicant attesting that such license remains in effect and has not been revoked;

128 (C) Evidence that, as of the date the application is submitted, the applicant or affiliates  
129 of the applicant have invested at least \$100 million in nonpublic companies located in  
130 rural areas within the United States;

131 (D) An estimate of the number of jobs that will be created or retained in this state as  
132 a result of the applicant's eligible investments;

133 (E) A business plan that includes a revenue impact assessment projecting state and  
134 local tax revenue to be generated by the applicant's proposed eligible investments  
135 prepared by a nationally recognized, third-party, independent economic forecasting firm

136 using a dynamic economic forecasting model that analyzes the applicant's business plan  
137 over the ten years following the date the application is submitted to the department; and  
138 (F) A nonrefundable application fee of \$5,000.00 payable to the department.

139 (2) Within 30 days after receipt of a completed application, the department shall grant  
140 or deny the application in full or in part. The department shall deny the application if:

141 (A) The applicant does not satisfy all of the criteria described in paragraph (1) of this  
142 subsection;

143 (B) The revenue impact assessment submitted with the application does not  
144 demonstrate that the applicant's business plan will result in a positive economic impact  
145 on this state over a ten-year period that exceeds the cumulative amount of tax credits  
146 that would be issued to the applicant if the application were approved; or

147 (C) The department has already approved the maximum amount of capital investment  
148 authority under paragraph (6) of this subsection.

149 If the department denies any part of the application, it shall inform the applicant of the  
150 grounds for the denial. If the applicant provides any additional information required by  
151 the department or otherwise completes its application within 15 days of the notice of  
152 denial, the application shall be considered completed as of the original date of  
153 submission. If the applicant fails to provide the information or fails to complete its  
154 application within the 15 day period, the application remains denied and must be  
155 resubmitted in full with a new submission date.

156 (3) If the application is complete, the department shall certify the proposed equity  
157 investment or long-term debt security as a capital investment that is eligible for credits  
158 under this Code section, subject to the limitations contained in paragraph (6) of this  
159 subsection. The department shall provide written notice of the certification to the rural  
160 fund.

161 (4) The department shall certify capital investments in the order that the applications  
162 were received by the department. Applications received on the same day shall be deemed  
163 to have been received simultaneously. Certified capital investment authority shall be  
164 transferable to affiliates of the applicant, and the department shall approve such transfers  
165 upon request.

166 (5) For applications that are complete and received on the same day, the department  
167 shall certify applications in proportionate percentages based upon the ratio of the amount  
168 of capital investments requested in an application to the total amount of capital  
169 investments requested in all applications.

170 (6) The department shall certify \$100 million in capital investments pursuant to this  
171 Code section.

172 (7) Within 60 days of the applicant receiving notice of certification, the rural fund shall  
 173 issue the capital investment to and receive cash in the amount of the certified amount  
 174 from a rural investor. At least 10 percent of the rural investor's capital investment shall  
 175 be composed of the proceeds of equity investments contributed to the rural investor by  
 176 affiliates of the rural investor, including officers, directors, members, and employees of  
 177 such affiliates. The rural fund shall provide the department with evidence of the receipt  
 178 of the cash investment within 65 days of the applicant receiving notice of certification.  
 179 If the rural fund does not receive the cash investment and issue the capital investment  
 180 within such time period following receipt of the certification notice, the certification shall  
 181 lapse and the rural fund shall not issue the capital investment without reapplying to the  
 182 department for certification. Lapsed certifications revert back to the department and shall  
 183 be reissued pro rata to applicants whose capital investment allocations were reduced  
 184 pursuant to paragraph (5) of this subsection and then in accordance with the application  
 185 process.

186 (f)(1) The department may recapture, from a rural investor that claimed the credit on a  
 187 tax return, the credit allowed under this Code section if:

188 (A) The rural fund does not invest 100 percent of its capital investment authority in  
 189 eligible investments in this state within two years of the closing date, with at least 10  
 190 percent of its capital investment authority initially invested in eligible businesses  
 191 engaged in agribusiness as defined by the United States Department of Agriculture;

192 (B) The rural fund, after satisfying subparagraph (A) of this paragraph, fails to  
 193 maintain eligible investments equal to 100 percent of its capital investment authority  
 194 until the fifth anniversary of the credit allowance date. For the purposes of this  
 195 subsection, an eligible investment is considered maintained even if the eligible  
 196 investment was sold or repaid so long as the rural fund reinvests an amount equal to the  
 197 capital returned or recovered by the rural fund from the original investment, exclusive  
 198 of any profits realized, in other eligible investments in this state within 12 months of  
 199 the receipt of such capital. Amounts received periodically by a rural fund shall be  
 200 treated as continually invested in eligible investments if the amounts are reinvested in  
 201 one or more eligible investments by the end of the following calendar year. A rural  
 202 fund shall not be required to reinvest capital returned from eligible investments after  
 203 the fourth anniversary of the credit allowance date, and such eligible investments shall  
 204 be considered held continuously by the rural fund through the fifth anniversary of the  
 205 credit allowance date;

206 (C) The rural fund, before exiting the program in accordance with subsection (i) of this  
 207 Code section, makes a distribution or payment that results in the rural fund having less  
 208 than 100 percent of its capital investment authority invested in eligible investments in

209 this state or available for investment in eligible investments and held in cash and other  
210 marketable securities; or

211 (D) The rural fund violates subsection (h) of this Code section.

212 (2) Recaptured credits and the related capital investment authority revert back to the  
213 department and shall be reissued pro rata to applicants whose capital investment  
214 allocations were reduced pursuant to paragraph (5) of subsection (e) of this Code section  
215 and then in accordance with the application process.

216 (g) Enforcement of each of the recapture provisions of paragraph (1) of subsection (f) of  
217 this Code section shall be subject to a six-month cure period. No recapture shall occur  
218 until the rural fund has been given notice of noncompliance and afforded six months from  
219 the date of such notice to cure the noncompliance.

220 (h) No eligible business that receives an eligible investment under this chapter, or any  
221 affiliates of such eligible business, may directly or indirectly:

222 (1) Own or have the right to acquire an ownership interest in a rural fund or member or  
223 affiliate of a rural fund, including, but not limited to, a holder of a capital investment  
224 issued by the rural fund; or

225 (2) Loan to or invest in a rural fund or member or affiliate of a rural fund, including, but  
226 not limited to, a holder of a capital investment issued by a rural fund, where the proceeds  
227 of such loan or investment are directly or indirectly used to fund or refinance the  
228 purchase of a capital investment under this Code section. For purposes of this subsection,  
229 a rural fund shall not be considered an affiliate of an eligible business solely as a result  
230 of its eligible investment in such business.

231 (i) On or after the sixth anniversary of the closing date, a rural fund may apply to the  
232 department to exit the program and no longer be subject to regulation under this Code  
233 section. The department shall respond to the exit application within 30 days of receipt. In  
234 evaluating the exit application, the fact that no credits have been recaptured and that the  
235 rural fund has not received a notice of recapture that has not been cured pursuant to  
236 subsection (g) of this Code section shall be sufficient evidence to prove that the rural fund  
237 is eligible for exit. The department shall not unreasonably deny an exit application  
238 submitted under this subsection. If the exit application is denied, the notice shall include  
239 the reasons for the determination. On and after an exit pursuant to this subsection, the state  
240 shall receive a 10 percent share of any distributions other than eligible distributions by the  
241 rural fund that made a capital investment, other than the amount necessary for a rural fund  
242 to repay principal and interest on its indebtedness. No claimant of credits pursuant to  
243 subsection (c) of this Code section shall receive distributions in excess of an amount that  
244 would result in an internal rate of return on capital invested that is more than 20 percent.

245 (j) A rural fund, before making an eligible investment, may request from the department  
 246 a written opinion as to whether the business in which it proposes to invest is an eligible  
 247 business. The department, not later than the tenth business day after the date of receipt of  
 248 such request, shall notify the rural fund of its determination. If the department fails to  
 249 notify the rural fund of its determination by the tenth business day, the business in which  
 250 the rural fund proposes to invest shall be considered an eligible business.

251 (k)(1) Rural funds shall submit a report to the department within the first 15 business  
 252 days after the second anniversary of the initial credit allowance date that provides  
 253 documentation as to the investment of 100 percent of the purchase price of such capital  
 254 investment in eligible investments. Such report shall include:

255 (A) The location of each eligible business receiving an eligible investment;

256 (B) Bank statements of such rural fund evidencing each eligible investment;

257 (C) A copy of the written opinion of the department set forth in subsection (j) of this  
 258 Code section or evidence that such business was an eligible business at the time of such  
 259 eligible investment, as applicable;

260 (D) The number of employment positions created and retained as a result of eligible  
 261 investments;

262 (E) The average annual salary of positions described in subparagraph (D) of this  
 263 paragraph; and

264 (F) Such other information required by the department.

265 (2) Thereafter, rural funds shall submit an annual report to the department within 45 days  
 266 of the beginning of the calendar year during the compliance period. The report shall  
 267 include but is not limited to the following:

268 (A) The number of employment positions created and retained as a result of eligible  
 269 investments; and

270 (B) The average annual salary of positions described in subparagraph (A) of this  
 271 paragraph."

272 **SECTION 2.**

273 This Act shall become effective on July 1, 2017, and shall be applicable to all taxable years  
 274 beginning on or after January 1, 2018.

275 **SECTION 3.**

276 All laws and parts of laws in conflict with this Act are repealed.