

House Bill 314 (COMMITTEE SUBSTITUTE)

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

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 an eligible business investment; to
3 provide for a short title; to provide for definitions; to provide that certain entities may earn
4 credit against the entity's state tax liability; to disallow refundability and sale on the open
5 market of claimed credits; to provide for certification of qualified capital investments; to
6 provide for recapture of credit claimed under certain circumstances; to provide for a request
7 of determination for eligibility; to provide for reporting; to provide for related matters; to
8 provide for an effective date and applicability; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**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
25 and 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, excluding revolving lines of credit and senior secured debt unless the eligible
73 business has a credit refusal letter or similar correspondence from a depository institution
74 or a referral letter or similar correspondence from a depository institution referring the
75 business to a rural fund; provided that, with respect to any one eligible business, the
76 maximum amount of eligible investments made in such business by one or more rural
77 funds, on a collective basis with all of the businesses' affiliates, with the proceeds of
78 capital investments shall be the greater of 20 percent of the rural fund's capital investment
79 authority or \$6.5 million, exclusive of eligible investments made with repaid or redeemed
80 eligible investments or interest or profits realized thereon.

81 (9) 'Long-term debt security' means any debt instrument issued by a rural fund to a rural
82 investor with an original maturity date of at least six years from the date of its issuance.

83 (10) 'Principal business operations' means the location where at least 60 percent of a
84 business's employees work or where employees who are paid at least 60 percent of such
85 business's payroll work. A business that has agreed to relocate employees using the
86 proceeds of an eligible investment to establish its principal business operations in a new
87 location shall be deemed to have its principal business operations in such new location
88 if it satisfies these requirements no later than 180 days after receiving a qualified eligible
89 investment.

90 (11) 'Purchase price' means the amount paid to the rural fund that issues a capital
91 investment which shall not exceed the amount of capital investment authority certified
92 pursuant to subsection (e) of this Code section.

93 (12) 'Rural area' means any county of this state that has a population of less than 75,000
94 according to the latest decennial census of the United States.

95 (13) 'Rural fund' means an entity certified by the department under subsection (e) of this
96 Code section.

97 (14) 'Rural investor' means Gan entity that makes a capital investment in a rural fund.

98 (15) 'State tax liability' means any liability incurred by any entity under Code
99 Sections 33-3-26 and 33-8-4 or Code Sections 48-7-21 and 48-7-27, or, if such taxes are

100 eliminated or reduced, the term shall also mean any tax liability imposed on an entity or
 101 other person that had tax liability under the laws of this state.

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

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

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

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

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

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

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

136 (E) A business plan that includes a revenue impact assessment projecting state and
137 local tax revenue to be generated by the applicant's proposed eligible investments
138 prepared by a nationally recognized, third-party, independent economic forecasting firm
139 using a dynamic economic forecasting model that analyzes the applicant's business plan
140 over the ten years following the date the application is submitted to the department; and

141 (F) A nonrefundable application fee of \$5,000.00 payable to the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

209 (C) The rural fund, before exiting the program in accordance with subsection (i) of this
 210 Code section, makes a distribution or payment that results in the rural fund having less
 211 than 100 percent of its capital investment authority invested in eligible investments in
 212 this state or available for investment in eligible investments and held in cash and other
 213 marketable securities; or

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

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

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

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

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

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

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

246 not held in eligible investments no later than the fourteenth anniversary of the closing date.
 247 No claimant of credits pursuant to subsection (c) of this Code section shall receive
 248 distributions in excess of an amount that would result in an internal rate of return on capital
 249 invested that is more than 20 percent.

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

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

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

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

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

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

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

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

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

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

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

277 **SECTION 2.**

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

280

SECTION 3.

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