

HOUSE SUBSTITUTE TO SENATE BILL 133

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 amend Article 4 of Chapter 13  
8 of Title 48 of the Official Code of Georgia Annotated, relating to the corporate net worth tax,  
9 so as to make such tax inapplicable to corporations worth less than a certain amount; to  
10 provide for related matters; to provide for an effective date and applicability; to repeal  
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 PART I  
14 SECTION 1-1.

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

17 "33-1-25.

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

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

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

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

29 (4) 'Capital investment' means any equity investment in a rural fund by a rural investor  
 30 that:

31 (A) Is acquired after the effective date of this Code section at its original issuance  
 32 solely in exchange for cash;

33 (B) Has 100 percent of its cash purchase price used by the rural fund to make qualified  
 34 investments in eligible businesses located in this state by the second anniversary of the  
 35 initial credit allowance date; and

36 (C) Is designated by the rural fund as a capital investment under this Code section and  
 37 is certified by the department pursuant to subsection (e) of this Code section. This  
 38 term shall include any capital investment that does not meet the provisions of  
 39 subsection (e)(1)(A) of this Code section if such investment was a capital investment  
 40 in the hands of a prior holder.

41 (5) 'Credit allowance date' mean the date on which a capital investment is made and each  
 42 of the five anniversary dates of such date thereafter.

43 (5.1) 'Department' means the Department of Community Affairs.

44 (6) 'Eligible business' means a business that, at the time of the initial qualified investment  
 45 in the company:

46 (A) Has less than 250 employees; and

47 (B)(i) Has its principal business operations in one or more rural areas in this state;  
 48 and

49 (ii) Produces or provides any goods or services produced in Georgia normally used  
 50 by farmers, ranchers, or producers and harvesters of aquatic products in their business  
 51 operations, or to improve the welfare or livelihood of such persons, or is involved in  
 52 the processing and marketing of agricultural products, farm supplies, and input  
 53 suppliers, or is engaged in agribusiness as defined by the United States Department  
 54 of Agriculture, or is engaged in manufacturing, health care, technology,  
 55 transportation, or related services, or if not engaged in such industries, the department  
 56 determines that such investment will be beneficial to the rural area and the economic  
 57 growth of the state. Any business which is classified as an eligible business at the time  
 58 of the initial investment in said business by a rural fund shall remain classified as an  
 59 eligible business and may receive follow-on investments from any rural fund, and  
 60 such follow-on investments shall be qualified investments even though such business  
 61 may not meet the definition of an eligible business at the time of such follow-on  
 62 investments.

63 (7) 'Eligible distribution' means:

64 (A) A distribution of cash to one or more equity owners of a rural investor to fully or  
65 partially offset a projected increase in the owner's federal or state tax liability, including  
66 any penalties and interest, related to the owner's ownership, management, or operation  
67 of the rural investor;

68 (B) A distribution of cash as payment of interest and principal on the debt of the rural  
69 investor or rural fund; or

70 (C) A distribution of cash related to the reasonable costs and expenses of forming,  
71 syndicating, managing, and operating the rural investor or the rural fund, or a return of  
72 equity to affiliates of a rural investor or rural fund. Such distributions may include  
73 reasonable and necessary fees paid for professional services, including legal and  
74 accounting services, related to the formation and operation of the rural fund and an  
75 annual management fee that shall not exceed 2 percent of the rural fund's qualified  
76 investment authority.

77 (8) 'Principal business operations' means the location where at least 60 percent of a  
78 business's employees work or where employees who are paid at least 60 percent of such  
79 business's payroll work. A business that has agreed to relocate employees using the  
80 proceeds of a qualified investment to establish its principal business operations in a new  
81 location shall be deemed to have its principal business operations in such new location  
82 if it satisfies these requirements no later than 180 days after receiving a qualified  
83 investment.

84 (9) 'Purchase price' means the amount paid to the rural fund that issues a capital  
85 investment which shall not exceed the amount of capital investment authority certified  
86 pursuant to subsection (e) of this Code section.

87 (10) 'Qualified investment' means any investment in an eligible business or any loan to  
88 an eligible business with a stated maturity date of at least one year after the date of  
89 issuance, excluding revolving lines of credit and senior secured debt unless the eligible  
90 business has a credit refusal letter or similar correspondence from a depository institution  
91 or a referral letter or similar correspondence from a depository institution referring the  
92 business to a rural fund; provided that, with respect to any one eligible business, the  
93 maximum amount of investments made in such business by one or more rural funds, on  
94 a collective basis with all of the businesses' affiliates, with the proceeds of capital  
95 investments shall be the greater of 20 percent of the rural fund's capital investment  
96 authority or \$6.5 million, exclusive of investments made with repaid or redeemed  
97 investments or interest or profits realized thereon.

98 (11) 'Rural area' means any county of this state that has a population of less than 50,000  
99 according to the latest decennial census of the United States.

100 (12) 'Rural fund' means an entity certified by the department under subsection (e) of this  
 101 Code section.

102 (13) 'Rural investor' means an entity that makes a capital investment in a rural fund.

103 (14) 'State tax liability' means any liability incurred by any entity under Code  
 104 Sections 33-3-26 and 33-8-4 or Code Sections 48-7-21 and 48-7-27, or, if such taxes are  
 105 eliminated or reduced, the term shall also mean any tax liability imposed on an entity or  
 106 other person that had tax liability under the laws of this state.

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

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

127 (e)(1) A rural fund that seeks to have an equity investment certified as a capital  
 128 investment and eligible for credits under this Code section shall apply to the department.  
 129 The department shall begin accepting applications within 90 days of the effective date of  
 130 this Act. The rural fund shall include the following:

131 (A) The amount of capital investment requested;

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

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

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

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

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

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

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

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

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

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

164 (3) If the application is complete, the department shall certify the proposed equity  
 165 investment as a capital investment that is eligible for credits under this Code section,  
 166 subject to the limitations contained in paragraph (6) of this subsection. The department  
 167 shall provide written notice of the certification to the rural fund.

168 (4) The department shall certify capital investments in the order that the applications  
 169 were received by the department. Applications received on the same day shall be deemed  
 170 to have been received simultaneously.

171 (5) For applications that are complete and received on the same day, the department  
 172 shall certify applications in proportionate percentages based upon the ratio of the amount

173 of capital investments requested in an application to the total amount of capital  
174 investments requested in all applications.

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

177 (7) Within 60 days of the applicant receiving notice of certification, the rural fund shall  
178 issue the capital investment to and receive cash in the amount of the certified amount  
179 from a rural investor. At least 50 percent of the rural investor's capital investment shall  
180 be composed of capital raised by the rural investor from sources, including directors,  
181 members, employees, officers, and affiliates of the rural investor, other than the amount  
182 of capital invested by the allocatee claiming the tax credits in exchange for such  
183 allocation of tax credits. The rural fund shall provide the department with evidence of  
184 the receipt of the cash investment within 65 days of the applicant receiving notice of  
185 certification. If the rural fund does not receive the cash investment and issue the capital  
186 investment within such time period following receipt of the certification notice, the  
187 certification shall lapse and the rural fund shall not issue the capital investment without  
188 reapplying to the department for certification. Lapsed certifications revert to the  
189 authority and shall be reissued pro rata to applicants whose capital investment allocations  
190 were reduced pursuant to paragraph (5) of this subsection and then in accordance with the  
191 application process.

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

194 (A) The rural fund does not invest 100 percent of its capital investment authority in  
195 qualified investments in this state within two years of the closing date, with at least 10  
196 percent of its capital investment authority initially invested in eligible businesses  
197 engaged in agribusiness as defined by the United States Department of Agriculture and  
198 at least 10 percent of such investment shall be equity investments;

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

210 the fourth anniversary of the credit allowance date, and such qualified investments shall  
211 be considered held continuously by the rural fund through the fifth anniversary of the  
212 credit allowance date;

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

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

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

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

227 (h) No eligible business that receives a qualified investment under this chapter, or any  
228 affiliates of such eligible business, may directly or indirectly:

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

232 (2) Loan to or invest in a rural fund or member or affiliate of a rural fund, including, but  
233 not limited to, a holder of a capital investment issued by a rural fund, where the proceeds  
234 of such loan or investment are directly or indirectly used to fund or refinance the  
235 purchase of a capital investment under this Code section.

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

247 fund. A rural fund shall distribute all amounts not held in qualified investments no later  
 248 than the fourteenth anniversary of the closing date. No claimant of credits pursuant to  
 249 subsection (c) of this Code section shall receive distributions in excess of an amount that  
 250 would result in an internal rate of return on capital invested that is more than 20 percent if  
 251 the number of jobs created is:

252 (1) Less than 60 percent of the projected jobs in the rural fund's approved business plan,  
 253 then the state shall receive a penalty of 10 percent of the total tax credits distributed to  
 254 the rural fund; or

255 (2) Greater than 60 percent but less than 80 percent of the projected jobs in the rural  
 256 fund's approved business plan, then the state shall receive a penalty of 5 percent of the  
 257 total tax credits distributed to the rural fund.

258 (j) A rural fund, before making a qualified investment, may request from the department  
 259 a written opinion as to whether the business in which it proposes to invest is an eligible  
 260 business. The department, not later than the twentieth business day after the date of receipt  
 261 of such request, shall notify the rural fund of its determination. If the department fails to  
 262 notify the rural fund of its determination by the twentieth business day, the business in  
 263 which the rural fund proposes to invest shall be considered an eligible business.

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

268 (A) The location of each eligible business receiving a qualified investment;

269 (B) Bank statements of such rural fund evidencing each qualified investment;

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

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

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

277 (F) Such other information required by the department`.

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

281 (A) The number of employment positions created and retained as a result of qualified  
 282 investments; and

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

285 **PART II**  
 286 **SECTION 2-1.**

287 Article 4 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to the  
 288 corporate net worth tax, is amended by revising Code Section 48-13-71, relating to entities  
 289 exempt from the corporate net worth tax, as follows:

290 "48-13-71.

291 The following are exempt from the payment of the tax imposed by this article:

- 292 (1) Those organizations not organized for pecuniary gain or profit; and  
 293 (2) Insurance companies which are separately taxed; and  
 294 (3) Those corporations having a net worth, including capital stock, paid-in surplus, and  
 295 earned surplus, of no more than \$100,000.00."

296 **SECTION 2-2.**

297 Said article is further amended by revising Code Section 48-13-72, relating to imposition of  
 298 annual corporate net worth tax on corporations doing business or owning property in the  
 299 state, as follows:

300 "48-13-72.

301 In addition to all other taxes imposed by law, there is imposed an annual corporate net  
 302 worth tax on all corporations incorporated under the laws of this state, all domesticated  
 303 foreign corporations, and all corporations incorporated or organized under the laws of any  
 304 other state, territory, or nation doing business or owning property in this state for the  
 305 privilege of carrying on a business within this state in the corporate form, except as  
 306 otherwise provided in Code Section 48-13-71."

307 **SECTION 2-3.**

308 Said article is further amended by revising Code Section 48-13-73, relating to the corporate  
 309 net worth tax amount, as follows:

310 "48-13-73.

311 (a) The tax imposed by this article shall be based upon corporate net worth according to  
 312 the following table:

<u>Corporations with Net Worth</u>	<u>Amount</u>
<u>Including Issued Capital Stock,</u>	<u>of Tax</u>
<u>Paid-in Surplus, and Earned Surplus</u>	

316	<del>Not exceeding \$10,000.00</del> .....	<del>\$ 10.00</del>
317	<del>Over \$10,000.00 and not exceeding \$25,000.00</del> .....	<del>20.00</del>
318	<del>Over \$25,000.00 and not exceeding \$40,000.00</del> .....	<del>40.00</del>
319	<del>Over \$40,000.00 and not exceeding \$60,000.00</del> .....	<del>60.00</del>
320	<del>Over \$60,000.00 and not exceeding \$80,000.00</del> .....	<del>75.00</del>
321	<del>Over \$80,000.00 and not exceeding \$100,000.00</del> .....	<del>100.00</del>
322	Over \$100,000.00 and not exceeding \$150,000.00 .....	\$ 125.00
323	Over \$150,000.00 and not exceeding \$200,000.00 .....	150.00
324	Over \$200,000.00 and not exceeding \$300,000.00 .....	200.00
325	Over \$300,000.00 and not exceeding \$500,000.00 .....	250.00
326	Over \$500,000.00 and not exceeding \$750,000.00 .....	300.00
327	Over \$750,000.00 and not exceeding \$1,000,000.00 .....	500.00
328	Over \$1,000,000.00 and not exceeding \$2,000,000.00 .....	750.00
329	Over \$2,000,000.00 and not exceeding \$4,000,000.00 .....	1,000.00
330	Over \$4,000,000.00 and not exceeding \$6,000,000.00 .....	1,250.00
331	Over \$6,000,000.00 and not exceeding \$8,000,000.00 .....	1,500.00
332	Over \$8,000,000.00 and not exceeding \$10,000,000.00 .....	1,750.00
333	Over \$10,000,000.00 and not exceeding \$12,000,000.00 .....	2,000.00
334	Over \$12,000,000.00 and not exceeding \$14,000,000.00 .....	2,500.00
335	Over \$14,000,000.00 and not exceeding \$16,000,000.00 .....	3,000.00
336	Over \$16,000,000.00 and not exceeding \$18,000,000.00 .....	3,500.00
337	Over \$18,000,000.00 and not exceeding \$20,000,000.00 .....	4,000.00
338	Over \$20,000,000.00 and not exceeding \$22,000,000.00 .....	4,500.00
339	Over \$22,000,000.00 .....	5,000.00

340 (b) With respect to any corporation coming into existence or becoming subject to the tax  
 341 for the first time for an initial taxable period of less than six months, the tax imposed for  
 342 such period shall be 50 percent of the tax imposed by this article for an entire year."

343 **PART III**

344 **SECTION 3-1.**

345 (a) Part I of this Act shall become effective on July 1, 2017, and shall apply to all tax years  
 346 beginning on or after January 1, 2018.

347 (b) Part II of this Act shall become effective on January 1, 2018, and shall apply to all tax  
 348 years beginning on or after such date.

349

**SECTION 3-2.**

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