AM 43 0208

ADOPTED

Representative Knight of the 130th offers the following amendment:

Amend the Senate substitute to HB 477 (LC 43 2036S) by replacing lines 1 through 10 with the following:

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to revise the period for applications for the tax credit for qualified donations of real property; to provide for an aggregate cap; to exempt certain sales of mechanically propelled watercraft by a dealer licensed under this article to an individual who resides outside of this state under certain conditions; to provide for the termination of suspensions of collection of sales and use taxes on jet fuel; to repeal existing provisions; to amend Code Section 33-1-25 of the Official Code of Georgia Annotated, relating to the "Georgia Agribusiness and Rural Jobs Act," so as to provide for a second round of funding and period for applications; to increase an application fee and provide for an annual maintenance fee; to change certain reporting requirements; to provide for audits; to revise and provide for definitions; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising paragraph (3) of subsection (d) of Code Section 48-7-29.12, relating to tax credit for qualified donation of real property, carryover of credit, appraisals, transfer of credit, and penalty, as follows:

By replacing line 32 with the following:

SECTION 1-2.

Said title is further amended by revising Code Section 48-8-19, relating to exemption of jet fuel from certain taxes and regulatory authority, as follows:

"48-8-19.

~~(a) The General Assembly finds that:~~

~~(1) The annual economic impact of Georgia airports amounts to more than $62 billion per year;~~

~~(2) Direct flights out of Hartsfield-Jackson Atlanta International Airport alone have supported nearly $11 billion in foreign investment and 42,000 jobs across the state;~~

~~(3) Georgia's sales and use tax levy on jet fuel amounts to the fourth highest tax burden on jet fuel among states with major airport hubs, placing Georgia at a competitive disadvantage compared to major airport hubs in Florida, New York, North Carolina, and Texas, among others; and~~

~~(4) The distribution of the proceeds of sales and use tax on jet fuel could jeopardize Georgia's legal standing and compliance with federal aviation programs.~~

~~(b) The General Assembly of Georgia hereby ratifies the Executive Order of the Governor dated July 30, 2018, and filed in the official records of the office of the Governor as Executive Order 07.30.18.01 which suspended the collection of any rate of sales and use tax as such tax applies to jet fuel. The General Assembly of Georgia hereby continues such suspension of collection indefinitely.~~

~~(c) For the time period commencing on August 1, 2018, as specified in the Executive Order of the Governor dated July 30, 2018, and filed in the official records of the office of the Governor as Executive Order 07.30.18.01, and concluding at the last moment of November 30, 2018, sales and use taxation pursuant to Code Section 48-8-30 as such tax applies to jet fuel shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-8-30 or any other law to the contrary.~~

(a) Notwithstanding anything to the contrary, except as explicitly provided in subsection (b) of this Code section, any and all suspensions of collection of taxes on the sale or use of jet fuel for any reason shall terminate at the last moment of June 30, 2021.

(b)(1) The collection of the sales and use taxes imposed on jet fuel pursuant to Code Section 48-8-30 during the time period commencing on August 1, 2018, and concluding at the last moment of November 30, 2018, shall remain suspended indefinitely and due and payable upon the termination of such suspension.

(2) The collection of the sales and use taxes imposed on jet fuel pursuant to Code Section 48-8-30 during the time period commencing on December 1, 2018, and concluding at the last moment of June 30, 2021, shall remain suspended indefinitely and due and payable upon the termination of such suspension.

(c) All taxes levied on the sale or use of jet fuel on or after July 1, 2021, shall be imposed and collected in strict accordance with this chapter. The collection of such taxes shall not be suspended or otherwise interfered with.

(d) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section.″

PART II

SECTION 2-1.

Code Section 33-1-25 of the Official Code of Georgia Annotated, relating to the "Georgia Agribusiness and Rural Jobs Act," is amended in subsection (b) by revising paragraphs (3), (6), and (7) and adding a new paragraph to read as follows:

″(.1) '2021 allocation' means the second round of funding provided for in paragraph (6.1) of subsection (e) of this Code section.″

″(3) 'Capital investment' means any equity investment in a rural fund by a rural investor that:

(A) Is acquired after July 1, 2017, at its original issuance solely in exchange for cash;

(B) Has 100 percent of its cash purchase price used by the rural fund to make qualified investments in eligible businesses located in this state by the second anniversary of the initial credit allowance date, or for the second round of funding provided for in paragraph (6.1) of subsection (e) of this Code section, has 100 percent of its cash purchase price used by the rural fund to make qualified investments in eligible businesses located in this state by the first anniversary of the initial credit allowance date; and

(C) Is designated by the rural fund as a capital investment under this Code section and is certified by the department pursuant to subsection (e) of this Code section. This term shall include any capital investment that does not meet the provisions of subsection ~~(e)(1)(A)~~ (e)(1.3)(A) of this Code section if such investment was a capital investment in the hands of a prior holder.″

″(6) 'Eligible business' means a business that, at the time of the initial qualified investment in the company, has less than 250 employees and its principal business operations are located in one or more rural areas in this state, provided that such business:

~~(A) Has less than 250 employees; and~~

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

~~(ii)~~(A) Produces or provides any goods or services produced in Georgia normally used by farmers, ranchers, or producers and harvesters of aquatic products in their business operations, or to improve the welfare or livelihood of such persons;~~, or is~~

(B) Is involved in the processing and marketing of agricultural products, farm supplies, and input suppliers;~~, or is~~

(C) Is engaged in agribusiness as defined by the United States Department of Agriculture;~~, or is~~

(D) Is engaged in manufacturing, health care, technology, transportation, or related services;~~,~~ or

(E) Is determined by the department to be an ~~if not engaged in such industries, the department determines that such~~ investment that will be beneficial to the rural area and the economic growth of the state.

~~Any~~ If a business which is classified as an eligible business at the time of the initial investment in said business by a rural fund grows to 250 employees or more, it shall remain classified as an eligible business and may receive follow-on investments from any rural fund, and such follow-on investments shall be qualified investments, provided that such business otherwise meets the definition of an eligible business.

(7) 'Eligible distribution' means:

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

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

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

SECTION 2-2.

Said Code section is further amended by revising subsections (e), (f), (i), and (k), and by adding a new subsection (l) to read as follows:

"(e)(1) A rural fund that seeks to have an equity investment certified as a capital investment and eligible for credits under this Code section shall apply to the department. (1.1) For the first round of funding provided for in paragraph (6) of this subsection, the ~~The~~ department shall begin accepting applications within 90 days of July 1, 2017, and shall cease accepting applications on June 30, 2021.

(1.2) For a second round of funding provided for in paragraph (6.1) of this subsection, the department shall begin accepting applications on August 1, 2021, and shall cease accepting applications after such second round of funding is exhausted.

(1.3) The rural fund shall include the following in its application:

(A) The amount of capital investment requested;

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

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

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

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

(F) A nonrefundable application fee of $5,000.00 for the round of funding provided for in paragraph (6) of this subsection and $25,000.00 for the round of funding provided for in paragraph (6.1) of this subsection payable to the department.

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

(A) The applicant does not satisfy all of the criteria described in paragraph ~~(1)~~ (1.3) of this subsection;

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

(C) The department has already approved the maximum amount of capital investment authority under paragraph (6) or paragraph (6.1) of this subsection, whichever paragraph is applicable.

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

(3) If the application is complete, the department shall certify the proposed equity investment as a capital investment that is eligible for credits under this Code section, subject to the limitations contained in paragraph (6) or paragraph (6.1) of this subsection, whichever paragraph is applicable. The department shall provide written notice of the certification to the rural fund.

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

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

(6) For a first round of funding, the ~~The~~ department shall certify $100 million in capital investments pursuant to this Code section until the earlier of the date that such funds are exhausted, or June 30, 2021.

(6.1) For a second round of funding, beginning on August 1, 2021, the department shall certify $50 million in capital investments pursuant to this Code section until such funds are exhausted.

(7) Within 60 days of the applicant receiving notice of certification, the rural fund shall issue the capital investment to and receive cash in the amount of the certified amount from a rural investor. At least 50 percent of the rural investor's capital investment shall be composed of capital raised by the rural investor from sources, including directors, members, employees, officers, and affiliates of the rural investor, other than the amount of capital invested by the allocatee claiming the tax credits in exchange for such allocation of tax credits. The rural fund shall provide the department with evidence of the receipt of the cash investment within 65 days of the applicant receiving notice of certification. If the rural fund does not receive the cash investment and issue the capital investment within such time period following receipt of the certification notice, the certification shall lapse and the rural fund shall not issue the capital investment without reapplying to the department for certification. Lapsed certifications revert to the authority and shall be reissued pro rata to applicants whose capital investment allocations

were reduced pursuant to paragraph (5) of this subsection and then in accordance with the application process.

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

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

(ii) For the 2021 allocation, the rural fund does not invest 100 percent of its capital investment authority in qualified investments within one year of the closing date;

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

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

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

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

″(i)(1) On or after the sixth anniversary of the closing date, a rural fund may apply to the department to exit the program and no longer be subject to regulation under this Code section. The department shall respond to the exit application within 30 days of receipt. In evaluating the exit application, the fact that no credits have been recaptured and that the rural fund has not received a notice of recapture that has not been cured pursuant to subsection (g) of this Code section shall be sufficient evidence to prove that the rural fund is eligible for exit. The department shall not unreasonably deny an exit application submitted under this subsection. If the exit application is denied, the notice shall include the reasons for the determination. The state shall receive a 10 percent share of any distributions annually from a rural fund that made a capital investment, other than the amount in excess of equity invested in the rural fund and tax distributions made by the rural fund. A rural fund shall distribute all amounts not held in qualified investments no later than the fourteenth anniversary of the closing date. No claimant of credits pursuant to subsection (c) of this Code section shall receive distributions in excess of an amount that would result in an internal rate of return on capital invested that is more than 20 percent. ~~if the number of jobs created is:~~

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

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

(2) At any time the rural fund proposes to make a distribution to its equity holders that, when added to all previous distributions to its equity holders, would be in excess of its initial capital investment authority, the growth fund shall remit to the department, if applicable, a payment equal to the product of the proposed distribution and a fraction, the numerator of which is the aggregate number of new annual jobs and jobs retained reported to the department pursuant to paragraph (1) of subsection (k) of this Code section and the denominator of which is the number of new annual jobs and jobs retained projected in the rural fund's application, as prorated based on the amount of initial capital investment authority received by the rural fund. No payment shall be due if the aggregate number of new annual jobs and jobs retained as of the date of the proposed distribution equal or exceed the number of new annual jobs and jobs retained projected in the rural fund's application, as prorated based on the amount of initial capital investment authority received."

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

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

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

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

(D) The number of employment positions created and retained as a result of qualified investments, including a certified payroll report from the eligible business receiving a qualified investment;

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

(F) Such other information required by the department.

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

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

(B) The average annual salary of positions described in subparagraph (A) of this paragraph, including a certified payroll report from the eligible business receiving a qualified investment; and

(C) The rural fund's total eligible capital investments as a percentage of its total capital investments.

(l)(1) With respect to the second round of funding provided for in paragraph (6.1) of subsection (e) of this Code section, each rural fund shall pay an annual maintenance fee of $7,500.00 to the department, beginning one year after the date of the initial credit allowance and annually thereafter for five years.

(2) Within 12 months of both the fourth credit allowance date and the sixth credit allowance date, the Department of Audits and Accounts shall conduct a performance and compliance audit, and the costs of the audit shall be shared pro rata among the participating rural funds. The audit shall be delivered to the President of the Senate, the Speaker of the House, and the chairpersons of the House Ways and Means Committee, and the Senate Committee on Finance.″

PART III

SECTION 3-1.

This Act shall become effective on June 30, 2021.

SECTION 3-2.