**South Carolina General Assembly**

124th Session, 2021-2022

**H. 5233**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Pendarvis, Cobb‑Hunter, King, Davis, Govan, Wetmore, Ott, Atkinson, Carter, Garvin, J.L. Johnson, Robinson, McKnight, Rivers, Hosey, K.O. Johnson, Thigpen, Jefferson, Brawley, Bernstein and Forrest

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Companion/Similar bill(s): 1144

Introduced in the House on April 7, 2022

Currently residing in the House Committee on **Ways and Means**

Summary: SC Agribusiness, Rural, and Opportunity Zone Jobs Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/7/2022 House Introduced and read first time

4/7/2022 House Referred to Committee on **Ways and Means**

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=5233&session=124&summary=B) at the website

**VERSIONS OF THIS BILL**

[4/7/2022](file:///p:\pprever\2021-22\5233_20220407.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 70 TO TITLE 12 SO AS TO ENACT THE “SOUTH CAROLINA AGRIBUSINESS, RURAL, AND OPPORTUNITY ZONE JOBS ACT”, TO PROVIDE DEFINITIONS, TO PROVIDE THE DEPARTMENT OF REVENUE SHALL ACCEPT APPLICATIONS FOR APPROVAL AS A GROWTH FUND, TO PROVIDE FOR CRITERIA FOR THE DEPARTMENT TO EITHER GRANT OR DENY AN APPLICATION, TO PROVIDE FOR CERTAIN INCOME TAX CREDITS, TO PROVIDE FOR CRITERIA FOR THE DEPARTMENT TO REVOKE A TAX CREDIT CERTIFICATE, TO PROVIDE THAT A GROWTH FUND MAY REQUEST FROM THE DEPARTMENT CERTAIN WRITTEN OPINIONS, TO PROVIDE FOR THE SUBMITTAL OF REPORTS, TO PROVIDE THAT THE DEPARTMENT MAY PROMULGATE RULES AND ISSUE FORMS AND NOTICES, AND TO PROVIDE THAT THE DEPARTMENT SHALL NOTIFY THE DEPARTMENT OF INSURANCE OF THE NAME OF ANY INSURANCE COMPANY ALLOCATED CERTAIN TAX CREDITS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 12 of the 1976 Code is amended by adding:

“CHAPTER 70

South Carolina Agribusiness, Rural, and Opportunity Zone Jobs Act

Section 12‑70‑100. This chapter may be referred to and cited as the ‘South Carolina Agribusiness, Rural, and Opportunity Zone Jobs Act’.

Section 12‑70‑110. For purposes of this chapter:

(1) ‘Affiliate’ means an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another entity. For the purposes of this item, an entity is ‘controlled by’ another entity if the controlling person holds, directly or indirectly, the majority voting or ownership interest in the controlled person or has control over the day‑to‑day operations of the controlled person by contract or by law.

(2) ‘Closing date’ means the date on which a growth fund has collected all amounts specified by Section 12‑70‑120(F).

(3) ‘Department’ means the Department of Revenue.

(4) ‘Growth business’ means a business that, at the time of the initial investment in the company by a growth fund:

(a) has fewer than two hundred and fifty employees;

(b) has its principal business operations in one or more growth zones in the State; and

(c) is engaged in North American Industry Classification System codes: 11, 21, 22, 23, 31‑33, 48‑49, 54, or 62 or, if not engaged in the industries, the department decides that the investment will be beneficial to the growth zone and the economic growth of this State.

(5) ‘Growth fund’ means an entity certified by the department pursuant to Section 12‑70‑120(E).

(6) ‘Growth investment’ means any capital or equity investment in a growth business or any loan to a growth business with a stated maturity at least one year after the date of issuance.

(7) ‘Growth zone’ means: (a) rural county; or (b) an opportunity zone.

(8) ‘High wage’ means a wage that is at least one hundred percent of the county average.

(9) ‘Investment authority’ means the amount stated on the notice issued pursuant to Section 12‑70‑120(E) certifying the growth fund. At least sixty percent of a growth fund’s investment authority is comprised of investor contributions.

(10) ‘Investor contribution’ means an investment of cash by a person with state premium tax liability in a growth fund that equals the amount specified with respect to the person in the department’s approval of a growth fund’s application pursuant to Section 12‑70‑120(E). The investment shall purchase an equity interest in the growth fund or purchase, at par value or premium, a debt instrument that has a maturity date at least five years from the closing date and a repayment schedule that is no faster than level principal amortization over five years.

(11) ‘Jobs retained’ means the number of employment positions at a growth business paying a high wage and requiring at least thirty‑five hours of work each week that existed before the initial growth investment and for which the growth business’s chief executive officer or similar officer certifies that the employment position would have been eliminated but for the initial growth investment. The retained jobs of a growth business are calculated each year based on the monthly average of high wage employment positions. The reported number of retained jobs may not exceed the number reported on the initial report pursuant to Section 12‑70‑160.

(12) ‘New annual jobs’ means the difference between:

(a)(i) the monthly average of employment positions at a growth business paying a high wage and requiring at least thirty‑five hours of work each week for the preceding calendar year; or

(ii) if the preceding calendar year contains the initial growth investment, the monthly average of employment positions at a growth business paying a high wage and requiring at least thirty‑five hours of work each week for the months including and after the initial growth investment and before the end of the preceding calendar year; and

(b) the number of full‑time, high wage employment positions at the growth business on the date of the initial growth investment.

If the amount calculated in subitem (a)(i) is less than zero, the new annual jobs amount is equal to zero.

(13) ‘Opportunity Zone’ means a qualified opportunity zone as defined by 26 U.S.C. 1400Z‑1;

(14) ‘Principal business operations’ means the location where at least sixty percent of the business’s employees work or where employees that are paid at least sixty percent of its payroll work. A business that has agreed to relocate or hire new employees using the proceeds of a growth investment to establish its principal business operations in a growth zone in the State is considered to have its principal business operations in this new location provided it satisfies this definition within one hundred eighty days after receiving the growth investment unless the department agrees to a later date.

(15) ‘Rural county’ means all South Carolina counties with a population under seventy‑five thousand based upon the most recent federal decennial census.

(16) ‘State premium tax liability’ means any liability incurred by any entity pursuant to Chapter 7, Title 38.

Section 12‑70‑120. (A) Beginning September 1, 2022, the department shall accept applications for approval as a growth fund on a form prescribed by the department. The application must include:

(1) the total investment authority sought by the applicant;

(2) evidence sufficient to the department’s satisfaction that, as of the date of its application, the applicant, or an affiliate of the applicant, has at least one principal in a rural business investment company licensed under 7 U.S.C. 2009cc, or as a small business investment company licensed under 15 U.S.C. 681, who is, and has been for at least four years, an employee or officer of the applicant or its affiliates;

(3) evidence that as of the date the application is submitted, the applicant or affiliates of the applicant have invested at least one hundred million dollars in nonpublic companies located in nonmetropolitan counties as defined by the Office of Management and Budget within the Office of the President of the United States on the basis of county or county‑equivalent units;

(4) evidence that as of the date the application is submitted, the applicant or affiliates have invested at least one hundred million dollars in nonpublic companies in low‑income communities as defined in 26 U.S.C. 45D;

(5) an estimate of the number of aggregate new annual jobs that will be created and jobs retained in this State because of the applicant’s growth investments;

(6) a business plan that includes a revenue impact assessment projecting state and local tax revenue, as well as reduced state expenditures, to be generated by the applicant’s proposed growth 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;

(7) An education and marketing plan to educate growth businesses regarding the availability of funds and requirements for participation pursuant to this act;

(8) a signed affidavit from each investor stating the amount of investor contributions each taxpayer commits to make; and

(9) a nonrefundable application fee of five thousand dollars. (B) Within thirty days after receipt of a completed application containing the information set forth in subsection (A), the department shall grant or deny the application. The department shall consider applications received on the same day to have been received simultaneously. The department shall approve investment authority up to an amount that allows more than fifteen million dollars in tax credits to be taken in any one year, excluding any credits that are carried forward pursuant to Section 12‑70‑130(C). If requests for investment authority exceed this limitation, the department shall reduce proportionally the investment authority and the investor contributions for each approved application as necessary to avoid exceeding the limit.

(C) The department shall deny an application if:

(1) it is incomplete or the application fee has not been paid in full;

(2) it does not satisfy all the criteria described in subsection (A)(2) and (3);

(3) the revenue impact assessment submitted pursuant to subsection (A)(5) 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’s investors;

(4) the investor contributions described in affidavits submitted pursuant to subsection (A)(6) do not equal at least sixty percent of the total amount of investment authority sought pursuant to the applicant’s business plan; or

(5) the department has already approved the maximum amount of investment authority and investor contributions allowed pursuant to subsection (B).

(D) If the department denies an application, the applicant may provide additional information to the department to complete, clarify, or cure defects in the application identified by the department, except for failure to comply with subsection (C)(4), within fifteen days of the notice of denial for reconsideration and determination. The department shall review and reconsider the applications within thirty days and before approving any pending application submitted after the original submission date of the reconsidered application.

(E) The department may not reduce the requested investment authority or deny a growth fund application for reasons other than those described in subsections (B) and (C). Upon approval of an application, the department shall certify the applicant as a growth fund specifying the amount of the applicant’s investment authority and the investor contributions required from each taxpayer that submitted an affidavit with the growth fund’s application.

(F)(1) Within sixty days of receiving the approval issued pursuant to subsection (E), a growth fund shall collect all investor contributions and collect additional investments of cash that, when added to the investor contributions, at least equal the growth fund’s investment authority. Within sixty‑five days of receiving the approval issued pursuant to subsection (E), a growth fund shall send to the department documentation sufficient to prove that the amounts described in this subsection have been collected. At least ten percent of the growth fund’s investment authority must consist of equity investments contributed by affiliates of the growth fund.

(2) Upon receipt of the documentation required by item (1), the department shall provide a tax credit certificate to each taxpayer that makes an investor contribution in the amount of the taxpayer’s investor contribution.

(G) If the growth fund fails to fully comply with subsection (F), the growth fund’s certification lapses and the corresponding investment authority and investor contributions do not count toward the limits on the program size pursuant to subsection (B). The department first shall award lapsed investment authority pro rata to each growth fund that was awarded less than the investment authority for which it applied, and a growth fund may allocate the associated investor contribution authority to any taxpayer with state premium tax liability in its discretion. Remaining investment authority may be awarded by the department to new applicants.

Section 12‑70‑130. (A) Subject to Section 12‑70‑140, a taxpayer who makes an investor contribution is vested with an earned credit against state premium tax liability or any bank tax liability imposed pursuant to Chapter 11 equal to the investor contribution that may be utilized twenty percent in each of the taxable years that includes the second through sixth anniversaries of the closing date, exclusive of amounts carried forward pursuant to subsection (C).

(B) The credit is nonrefundable and may not be sold, transferred, or allocated to another entity other than an affiliate that is an affiliate at the time of the submission of the investor’s affidavit included in the growth fund’s application.

(C) The amount of the credit claimed by a taxpayer may not exceed the amount of the taxpayer’s state premium tax liability for the tax year for which the credit is claimed. An amount of tax credit that the entity does not claim in a taxable year may be carried forward for use in future taxable years for a period not to exceed ten years.

(D) A taxpayer claiming a credit pursuant to this section shall submit a copy of the tax credit certificate with the taxpayer’s return for each taxable year for which the credit is claimed.

Section 12‑70‑140. (A) The department shall revoke a tax credit certificate issued pursuant to Section 12‑70‑120(F)(2) if any of the following occur with respect to a growth fund before a growth fund exits the program pursuant to subsection (E):

(1) the growth fund does not invest one hundred percent of its investment authority in growth investments in this State within two years of the closing date, including at seventy‑five percent of its investment authority in growth businesses located in rural counties;

(2) the growth fund, after satisfying item (1), fails to maintain growth investments equal to one hundred percent of its investment authority until the sixth anniversary of the closing date. For the purposes of this item, an investment is ‘maintained’ even if it is sold or repaid as long as the growth fund reinvests an amount equal to the capital returned or recovered from the original investment, exclusive of any profits realized, in other growth investments in this State within twelve months of the receipt of the capital. Amounts received periodically by a growth fund must be treated as continuously invested in growth investments if the amounts are reinvested in one or more growth investments by the end of the following calendar year;

(3) the growth fund, before exiting the program pursuant to subsection (E), makes a distribution or payment that results in the growth fund having less than one hundred percent of its investment authority invested in growth investments in this State or available for investment in growth investments and held in cash and other marketable securities;

(4) the growth fund makes a growth investment in a growth business that, directly or indirectly, through an affiliate, owns, has the right to acquire an ownership interest, makes a loan to, or makes an investment in the growth fund, an affiliate of the growth fund, or an investor in the growth fund. This item does not apply to investments in publicly traded securities by a growth business or an owner or affiliate of the growth business. For purposes of this subsection, a growth fund is not considered an affiliate of a growth business solely because of its growth investment.

(B) The maximum amount of growth investments in a growth business, including amounts invested in affiliates of the growth business, that a growth fund may count towards its satisfaction of the requirements of subsection (A)(1) and (2) is the greater of five million dollars or twenty percent of its investment authority.

(C) Before revoking tax credit certificates pursuant to this section, the department shall notify the growth fund of the reasons for the pending revocation. The growth fund shall have ninety days from the date the notice is received to correct any violation outlined in the notice to the satisfaction of the department and avoid revocation of the tax credit certificate.

(D) If tax credit certificates are revoked pursuant to this section, the associated investment authority and investor contributions may not count toward the limit on total investment authority and investor contributions described in Section 12‑70‑120(B). The department first shall award reverted investment authority pro rata to each growth fund that was awarded less than the requested investment authority for which it applied, and the growth fund may allocate the associated investor contribution authority to any taxpayer with state premium tax liability in its discretion. The department may award any remaining investment authority to new applicants.

(E)(1) On or after the seventh anniversary of the closing date, a growth fund may apply to the department to exit the program and no longer be subject to regulation except as set forth in subsection (B). The department shall respond to the application within thirty days of receipt. In evaluating the application, the fact that no tax credit certificates have been revoked and that the growth fund has not received a notice of revocation that has not been cured pursuant to subsection (C) is sufficient evidence to prove that the growth fund is eligible for exit. The department may not unreasonably deny an application submitted pursuant to this subsection. If the application is denied, the notice must include the reasons for the determination.

(2) After its exit from the program pursuant to item (1), a growth fund may not be permitted to make distributions to its equity holders unless and until it has made growth investments equal to at least one hundred and fifty percent of its investment authority. Each growth fund shall continue to report the amount of growth investments made to the department annually until it has made growth investments equal to at least one hundred and fifty percent of its investment authority.

(3) At any time the growth fund proposes to make a distribution to its equity holders that, when added to all previous distributions to its equity holders, is in excess of its investment authority, the growth fund shall remit to the department, if applicable, a payment to equal the product of the proposed distribution and the fraction, the numerator of which is the aggregate number of new annual jobs and jobs retained reported to the department pursuant to Section 12‑70‑160(A) and the denominator of which is the number of new annual jobs and jobs retained projected in the growth fund’s application, as prorated based on the amount of investment authority received by the growth fund. No payment is 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 growth fund’s application, as prorated based on the amount of investment authority received.

(F) The department may not revoke a tax credit certificate after the growth fund’s exit from the program.

Section 12‑70‑150. A growth fund, before making a growth investment, may request from the department a written opinion as to whether the business in which it proposes to invest satisfies the definition of a growth business. The department, not later than the fifteenth business day after the date of receipt of the request, shall notify the growth fund of its determination. If the department fails to notify the growth fund by the fifteenth business day of its determination, the business in which the growth fund proposes to invest is considered a growth business.

Section 12‑70‑160. (A) Each growth fund shall submit a report to the department on or before the fifth business day after each anniversary of the closing date before its exit from the program pursuant to Section 12‑70‑140(E). The report must provide documentation as to each growth investment made by the growth fund and include:

(1) a bank statement evidencing each growth investment;

(2) the name, location, and industry of each growth business receiving a growth investment, including either the determination letter pursuant to Section 12‑70‑150 or evidence that the business qualified as a growth business at the time the investment was made;

(3) the number of employment positions at each growth business on the date of the growth fund’s initial growth investment;

(4) the number of new annual jobs and jobs retained at each growth business;

(5) the average annual salary of the positions described in item (4);

(6) the cumulative amount of growth investments made in growth businesses; and

(7) any other information required by the department.

(B) The growth fund is not required to provide information with respect to growth investments that have been redeemed or repaid as part of the annual report pursuant to subsection (A) but shall provide the information if available.

Section 12‑70‑170. (A) The department may promulgate rules to implement the provisions of this chapter.

(B) The department shall issue all forms and notices required in accordance with the provisions of this chapter.

Section 12‑70‑180. The department shall notify the Department of Insurance of the name of any insurance company allocated tax credits by this chapter and the amount of the credits.”

SECTION 2. This act takes effect upon approval by the Governor and first applies to income tax years beginning after 2022 and investments made after the Governor’s approval.

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