

By: Senator(s) Blackwell, Caughman

To: Finance

SENATE BILL NO. 2239

1 AN ACT TO CREATE THE MISSISSIPPI AGRIBUSINESS AND RURAL JOBS
2 ACT; TO PROVIDE AN INSURANCE PREMIUM TAX CREDIT AND INCOME TAX
3 CREDIT TO RURAL INVESTORS UPON MAKING A CAPITAL INVESTMENT IN A
4 RURAL FUND AS CERTIFIED BY THE MISSISSIPPI DEVELOPMENT AUTHORITY
5 UNDER THIS ACT; TO PROVIDE THE AMOUNT OF THE CREDIT; TO PROVIDE
6 THAT THE TAX CREDITS AUTHORIZED UNDER THIS ACT SHALL BE ALLOCATED
7 BY THE MISSISSIPPI DEVELOPMENT AUTHORITY AND THAT THE AMOUNT OF
8 THE CREDITS AUTHORIZED UNDER THIS ACT SHALL NOT EXCEED
9 \$100,000,000.00; TO AMEND SECTION 27-15-129, MISSISSIPPI CODE OF
10 1972, TO PROVIDE THAT THE INVESTMENTS THAT MAY REDUCE A TAXPAYER'S
11 TAX LIABILITY UNDER SUCH SECTION SHALL NOT INCLUDE AND INVESTMENT
12 FOR WHICH A CREDIT IS ALLOCATED UNDER THIS ACT; AND FOR RELATED
13 PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 **SECTION 1.** This act shall be known and may be cited as the
16 "Mississippi Agribusiness and Rural Jobs Act."

17 **SECTION 2.** (1) As used in this section:

18 (a) "Affiliate" means an entity that directly, or
19 indirectly through one or more intermediaries, controls, or is
20 controlled by, or is under common control with another entity.
21 For the purposes of this section, an entity is "controlled by"
22 another entity if the controlling entity holds, directly or
23 indirectly, the majority voting or ownership interest in the



24 controlled entity or has control over the day-to-day operations of
25 the controlled entity by contract or by law.

26 (b) "Applicable percentage" means zero percent (0%) for
27 the first two (2) credit allowance dates and fifteen percent (15%)
28 for the next four (4) credit allowance dates.

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

31 (i) Is acquired after July 1, 2019, at its
32 original issuance solely in exchange for cash;

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

37 (iii) Is designated by the rural fund as a capital
38 investment under this section and is certified by the MDA pursuant
39 to subsection (5) of this section. This term shall include any
40 capital investment that does not meet the provisions of subsection
41 (5)(a)(i) of this section if such investment was a capital
42 investment in the hands of a prior holder.

43 (d) "Credit allowance date" means the date on which a
44 capital investment is made and each of the five (5) anniversary
45 dates of such date thereafter.

46 (e) "MDA" means the Mississippi Development Authority.

47 (f) "Eligible business" means a business that, at the
48 time of the initial qualified investment in the company:



(i) Has less than two hundred fifty (250) employees;

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

(iii) Produces or provides any goods or services produced in Mississippi 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 involved in the processing and marketing of agricultural products, farm supplies, and input suppliers, or is engaged in agribusiness as defined by the United States Department of Agriculture, or is engaged in manufacturing, health care, technology, transportation, or related services, or if not engaged in such industries, the MDA determines that such investment will be beneficial to the rural area and the economic growth of the state.

Any business which is classified as an eligible business at the time of the initial investment in the business by a rural fund shall remain classified as an eligible business and may receive follow-on investments from any rural fund, and the follow-on investments shall be qualified investments even though the business may not meet the definition of an eligible business at the time of such follow-on investments.

(g) "Eligible distribution" means:



(i) 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;

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

(iii) 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. These 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 two percent (2%) of the rural fund's qualified investment authority.

(h) "Principal business operations" means the location where at least sixty percent (60%) of a business's employees work or where employees who are paid at least sixty percent (60%) of such business's payroll work. A business that has agreed to relocate employees using the proceeds of a qualified investment to establish its principal business operations in a new location shall be deemed to have its principal business operations in such new location if it satisfies these requirements no later than one hundred eighty (180) days after receiving a qualified investment.



98 (i) "Purchase price" means the amount paid to the rural
99 fund that issues a capital investment which shall not exceed the
100 amount of capital investment authority certified pursuant to
101 subsection (5) of this section.

102 (j) "Qualified investment" means any investment in an
103 eligible business or any loan to an eligible business with a
104 stated maturity date of at least one (1) year after the date of
105 issuance, excluding revolving lines of credit and senior secured
106 debt unless the eligible business has a credit refusal letter or
107 similar correspondence from a depository institution or a referral
108 letter or similar correspondence from a depository institution
109 referring the business to a rural fund; provided that, with
110 respect to any one (1) eligible business, the maximum amount of
111 investments made in such business by one or more rural funds, on a
112 collective basis with all of the businesses' affiliates, with the
113 proceeds of capital investments shall be the greater of twenty
114 percent (20%) of the rural fund's capital investment authority or
115 Six Million Five Hundred Thousand Dollars (\$6,500,000.00),
116 exclusive of investments made with repaid or redeemed investments
117 or interest or profits realized thereon.

118 (k) "Rural area" means any county of this state that
119 has a population of less than fifty thousand (50,000) according to
120 the latest decennial census of the United States.

121 (l) "Rural fund" means an entity certified by the MDA
122 under subsection (4) of this section.



(m) "Rural investor" means an entity that makes a capital investment in a rural fund.

(n) "State tax liability" means:

(i) Any insurance premium tax liability incurred by any entity under Sections 27-15-103, 27-15-109 or 27-15-123; and

(ii) Any income tax liability incurred under the Income Tax Law of 1952 (Section 27-7-1 et seq.).

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

(3) No credit claimed under this section shall be refundable or saleable on the open market. Credits earned by or allocated to



a partnership, limited liability company, or corporation may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders, and a rural fund must notify the MDA of the names of the entities that are eligible to utilize credits pursuant to an allocation of credits or a change in allocation of credits or due to a transfer of a capital investment upon such allocation, change, or transfer. Such allocation shall be not considered a sale for purposes of this section.

(4) (a) A rural fund that seeks to have an equity investment certified as a capital investment and eligible for credits under this section shall apply to the MDA. The MDA shall begin accepting applications within ninety (90) days of July 1, 2018. The rural fund shall include the following:

(i) The amount of capital investment requested;

(ii) A copy of the applicant's or an affiliate of the applicant's license as a rural business investment company under 7 USC Section 2009cc or as a small business investment company under 15 USC 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;

(iii) 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



(\$100,000,000.00) in nonpublic companies located in rural areas within the United States;

(iv) 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;

(v) 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 (10) years following the date the application is submitted to the MDA; and

(vi) A nonrefundable application fee of Five Thousand Dollars (\$5,000.00) payable to the MDA. The MDA shall deny the application if:

1. The applicant does not satisfy all of the criteria described in this paragraph (a);

2. 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



196 3. The MDA has already approved the maximum
197 amount of capital investment authority under paragraph (f) of this
198 subsection.

199 If the MDA denies any part of the application, it shall
200 inform the applicant of the grounds for the denial. If the
201 applicant provides any additional information required by the MDA
202 or otherwise completes its application within fifteen (15) days of
203 the notice of denial, the application shall be considered
204 completed as of the original date of the submission. If the
205 applicant fails to provide the information or fails to complete
206 its application within the fifteen-day period, the application
207 remains denied and must be resubmitted in full with a new
208 submission date.

209 (b) If the application is complete, the MDA shall
210 certify the proposed equity investment as a capital investment
211 that is eligible for credits under this section, subject to the
212 limitations contained in paragraph (f) of this subsection.

213 (c) The MDA shall certify capital investments in the
214 order that the application were received by the MDA. Applications
215 received on the same day shall be deemed to have been received
216 simultaneously.

217 (d) For applications that are complete and received on
218 the same day, the MDA shall certify the applications in
219 proportionate percentage 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.

(e) The MDA shall certify One Hundred Million Dollars (\$100,000,000.00) in capital investments pursuant to this section.

(f) Within sixty (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 fifty percent (50%) 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 MDA with evidence of the receipt of the cash investment within sixty-five (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 MDA for certification. Lapsed certifications revert to the MDA and shall be reissued pro rata to applicants whose capital investment allocations were reduced pursuant to paragraph (e) of this subsection and then in accordance with the application process.



(5) (a) The MDA may recapture the credit allowed under this section from a rural investor that claimed the credit on a tax return if:

(i) The rural fund does not invest one hundred percent (100%) of its capital investment authority in qualified investments in this state within two (2) years of the closing date, with at least ten percent (10%) 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 ten percent (10%) of such investment shall be equity investments;

(ii) The rural fund, after satisfying subparagraph (i) of this paragraph, fails to maintain qualified investments equal to one hundred percent (100%) 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 twelve (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;

(iii) The rural fund, before exiting the program in accordance with subsection (8) of this section, makes a distribution or payment that results in the rural fund having less than one hundred percent (100%) 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

(iv) The rural fund violates subsection (9) of this section.

(b) Recaptured credits and the related capital investment authority revert to the MDA and shall be reissued pro rata to applicants whose capital investment allocations were reduced pursuant to paragraph (d) of subsection (4) of this section and then in accordance with the application process.

(6) Enforcement of each of the recapture provisions of paragraph (a) of subsection (5) of this section shall be subject to a six-month cure period. No recapture shall occur until the rural fund has been given notice of noncompliance and afforded six (6) months from the date of such notice to cure the noncompliance.



(7) No eligible business that receives a qualified investment under this section, or any affiliates of such eligible business, may directly or indirectly:

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

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

(8) On or after the sixth anniversary of the closing date, a rural fund may apply to the MDA to exit the program and no longer be subject to regulation under this section. The MDA shall respond to the exit application within thirty (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 (6) of this section shall be sufficient evidence to prove that the rural fund is eligible for exit. The MDA 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



319 receive a ten percent (10%) share of any distributions annually
320 from a rural fund that made a capital investment, other than the
321 amount in excess of equity invested in the rural fund and tax
322 distributions made by the rural fund. A rural fund shall
323 distribute all amounts not held in qualified investments no later
324 than the fourteenth anniversary of the closing date. No claimant
325 of credits pursuant to subsection (2) of this section shall
326 receive distributions in excess of an amount that would result in
327 an internal rate of return on capital invested that is more than
328 twenty percent (20%) if the number of jobs created is:

329 (a) Less than sixty percent (60%) of the projected jobs
330 in the rural fund's approved business plan, then the state shall
331 receive a penalty of ten percent (10%) of the total tax credits
332 distributed to the rural fund; or

333 (b) Greater than sixty percent (60%) but less than
334 eighty percent (80%) of the projected jobs in the rural fund's
335 approved business plan, then the state shall receive a penalty of
336 five percent (5%) of the total tax credits distributed to the
337 rural fund.

338 (9) A rural fund, before making a qualified investment, may
339 request from the MDA a written opinion as to whether the business
340 in which it proposes to invest is an eligible business. The MDA,
341 not later than the twentieth business day after the date of
342 receipt of such request, shall notify the rural fund of its
343 determination. If the MDA fails to notify the rural fund of its



determination by the twentieth business day, the business in which the rural fund proposes to invest shall be considered an eligible business.

(10) (a) Rural funds shall submit a report to the MDA within the first fifteen (15) business days after the second anniversary of the initial credit allowance date that provides documentation as to the investment of one hundred percent (100%) of the purchase price of such capital investment in qualified investments. The report shall include:

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

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

(iii) A copy of the written opinion of the MDA set forth in subsection (9) of this section or evidence that such business was an eligible business at the time of such qualified investment, as applicable;

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

(v) The average annual salary of positions described in subparagraph (iv) of this paragraph; and

(vi) Such other information required by the MDA.

(b) Thereafter, rural funds shall submit an annual report to the MDA within forty-five (45) days of the beginning of



368 the calendar year during the compliance period. The report shall
369 include, but is not limited to, the following:

370 (i) The number of employment positions created and
371 retained as a result of qualified investments; and

372 (ii) The average annual salary of positions
373 described in subparagraph (i) of this paragraph.

374 **SECTION 3.** Section 27-15-129, Mississippi Code of 1972, is
375 amended as follows:

376 27-15-129. (1) The amount of premium tax payable pursuant
377 to Sections 27-15-103, 27-15-109, 27-15-119 and 83-31-45,
378 Mississippi Code of 1972, shall be reduced from the amount
379 otherwise fixed in such sections if the payer files a sworn
380 statement with the required annual report showing as of the
381 beginning of the reporting period that at least the following
382 amounts of the total admitted assets of the payer were invested
383 and maintained in qualifying Mississippi investments as
384 hereinafter defined in subsection (2) of this section over the
385 period covered by such report:

386	Percentage of Total Admitted	Percentage of Premium
387	Assets in Qualifying	Tax Payable
388	Mississippi Investments	
389	1%	99%
390	2%	98%
391	3%	97%
392	4%	96%



393	5%	95%
394	6%	94%
395	7%	93%
396	8%	92%
397	9%	91%
398	10%	80%
399	15%	70%
400	20%	60%
401	25%	50%

402 (2) For the purpose of this section, "a qualifying
403 Mississippi investment" is hereby defined as follows:

404 (a) Certificates of deposit issued by any bank or
405 savings and loan association domiciled in this state;

406 (b) Bonds of this state or bonds of municipal, school,
407 road or levee districts, or other political subdivisions of this
408 state;

409 (c) Loans evidenced by notes and secured by deeds of
410 trust on property located in this state;

411 (d) Real property located in this state;

412 (e) Policy loans to residents of Mississippi, or other
413 loans to residents of this state, or to corporations domiciled in
414 this state;

415 (f) Common or preferred stock, bonds and other
416 evidences of indebtedness of corporations domiciled in this state;
417 and



(g) Cash on deposit in any bank or savings and loan association domiciled in this state.

"A qualifying Mississippi investment" shall not include any investment for which a credit is allocated under Section 57-105-1 * * *, Section 57-115-1 et seq. and/or Section 2 of this act.

(3) If the credits, or any part thereof, authorized by the preceding provisions of this section shall be held by a court of final jurisdiction to be unconstitutional and void for any reason or to make the annual premium taxes levied by Sections 27-15-103, 27-15-109, 27-15-119 and 83-31-45, Mississippi Code of 1972, unlawfully discriminatory or otherwise invalid under the Fourteenth Amendment or the Commerce Clause of the Constitution of the United States or under any state or other federal constitutional provisions, it is hereby expressly declared that such fact shall in no way affect the validity of the annual premium taxes levied thereby, and that such provisions would have been enacted even though the Legislature had known this credit section would be held invalid.

(4) This section shall apply to taxes accruing and investments existing from and after July 1, 1985.

SECTION 4. This act shall take effect and be in force from and after July 1, 2019.

