

Senate File 2204 - Introduced

SENATE FILE 2204

BY BROWN

A BILL FOR

1 An Act relating to tax credits awarded by the economic
2 development authority for specific capital contributions
3 made to certified rural business growth funds for investment
4 in qualified businesses.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 15.281 Short title.

2 This part shall be known and may be cited as the "*Iowa Rural*
3 *Development Tax Credit Program*".

4 Sec. 2. NEW SECTION. 15.282 Definitions.

5 As used in this part, unless the context otherwise requires:

6 1. "*Affiliate*" means a person that directly, or indirectly
7 through one or more intermediaries, controls, is controlled
8 by, or is under common control with another person. A person
9 is controlled by another person if the controlling person
10 holds, directly or indirectly, the majority voting or ownership
11 interest in the controlled person or has control, by contract
12 or by law, over the day-to-day operations of the controlled
13 person.

14 2. "*Authority*" means the economic development authority
15 created in section 15.105.

16 3. "*Closing date*" means the date on which a rural business
17 growth fund completes collection of all contributions and
18 investments and submits all required documentation to the
19 authority pursuant to section 15.283, subsection 7.

20 4. "*Credit-eligible capital contribution*" means an investment
21 of cash by a person in a rural business growth fund that is
22 eligible for a tax credit certificate issued by the authority
23 pursuant to section 15.284, subsection 1. The cash investment
24 shall purchase either of the following:

25 a. An equity interest in the growth fund.

26 b. A debt instrument, at par value or premium, issued by the
27 growth fund that has a maturity date at least six years after
28 the growth fund's closing date.

29 5. "*Eligible investment authority*" means the amount stated
30 on the certification the authority issues pursuant to section
31 15.283, subsection 7, paragraph "a". At least sixty percent
32 of a growth fund's eligible investment authority shall be
33 comprised of credit-eligible capital contributions.

34 6. "*Employee*" means a natural person who is employed in this
35 state by a qualified business and who is either salaried, works

1 a minimum of thirty-five hours per week, or another period of
2 time generally accepted by custom, industry, or practice as
3 full-time employment.

4 7. "*Equity holder*" means a person that makes an equity
5 investment in a rural business growth fund.

6 8. "*Growth investment*" means any capital or equity
7 investment a growth fund makes in a qualified business, or any
8 loan from a growth fund to a qualified business with a stated
9 maturity at least one year after the date of issuance.

10 9. "*Jobs created*" means the number of new employees at a
11 qualified business, after an initial growth investment, at
12 the end of each subsequent calendar year. This number is
13 calculated annually by adding together the number of employees
14 at the qualified business on the last day of each calendar
15 month and dividing by twelve, then subtracting the number of
16 employees at the qualified business on the date the day before
17 the date of the initial growth investment. If the resulting
18 total is less than zero, the jobs created is equal to zero.

19 10. "*Jobs retained*" means the number of employees at a
20 qualified business the day before the date of an initial growth
21 investment that the qualified business's chief executive
22 officer or similar officer certifies as being positions located
23 in this state that would have been eliminated but for the
24 initial growth investment.

25 11. "*Located in*" means the place or places at which a
26 business's operations are located and where at least sixty
27 percent of the business's employees work, or where employees
28 that are paid at least sixty percent of the business's payroll
29 work.

30 12. "*Program*" means the Iowa rural development tax credit
31 program administered under this part.

32 13. "*Qualified business*" means any business within this
33 state that has fewer than two hundred fifty employees,
34 including ostensible subcontractors pursuant to 13 C.F.R.
35 §121.103(h)(4).

1 14. "Revenue" means the total state and local income
2 produced by a rural business growth fund's economic activity.

3 15. "Rural business growth fund" or "growth fund" means a
4 person, or an affiliate of a person, certified by the authority
5 pursuant to section 15.283, subsection 7, paragraph "a".

6 16. "Within this state" means in the state of Iowa, or an
7 out-of-state business that has agreed to use a proposed growth
8 investment to become a qualified business within one hundred
9 eighty days of receiving the growth investment.

10 Sec. 3. NEW SECTION. 15.283 **Application and agreement.**

11 1. The authority shall begin accepting program applications
12 on January 4, 2021. An application is deemed received based
13 on the date and time stamp that shall be generated by the
14 authority upon receipt of the application. Applications
15 received by the authority on the same day shall be deemed to
16 have been received simultaneously.

17 2. A person seeking certification as a rural business
18 growth fund shall apply to the authority in the form and manner
19 prescribed by the authority. The application must include all
20 of the following:

21 a. The eligible investment authority sought by the
22 applicant.

23 b. A copy of the applicant's, or an affiliate of the
24 applicant's, license as a rural business investment company
25 as defined under 7 U.S.C. §2009cc(14), or license as a small
26 business investment company under 15 U.S.C. §681.

27 c. Documentation as required by the authority to establish
28 that at least one principal of the applicant has been an
29 officer or an employee of the rural business investment
30 company, the small business investment company, or an affiliate
31 thereof, for a minimum of four years prior to the date of
32 application.

33 d. A revenue impact assessment for the applicant's proposed
34 growth investments as determined by an econometric analysis
35 conducted by a nationally recognized third-party independent

1 econometric firm. The revenue impact assessment must provide
2 an analysis of the applicant's proposed growth investments over
3 the ten consecutive years following the date the applicant's
4 application is submitted to the authority, and must demonstrate
5 that there will be a positive revenue impact on this state
6 that exceeds the cumulative amount of tax credits, that if the
7 application is approved, may be issued by the authority to the
8 rural business growth fund's investors.

9 e. The number of jobs created and the number of jobs
10 retained assumed in the revenue impact assessment required by
11 paragraph "d".

12 f. A signed affidavit from each investor that identifies
13 the investor and the amount of the credit-eligible capital
14 contribution that the investor has committed to the applicant's
15 proposed growth fund.

16 g. A nonrefundable application fee of five thousand dollars.
17 All application fees submitted to the authority pursuant to
18 this paragraph shall be used by the authority to administer
19 this part.

20 3. The authority shall review and make a determination
21 to approve or deny each application within the time frame
22 adopted by rule by the authority. The authority shall review
23 applications on a first-come, first-served basis as determined
24 pursuant to subsection 1.

25 4. The authority shall not approve more than one hundred
26 million dollars in eligible investment authority and not
27 more than sixty million dollars in credit-eligible capital
28 contributions under the program. If approved applications
29 that are simultaneously received would collectively exceed the
30 maximum limit on eligible investment authority or the maximum
31 on credit-eligible capital contributions, the authority shall
32 proportionally reduce the growth fund's eligible investment
33 authority and credit-eligible capital contributions for each
34 of the simultaneous applications as necessary to comply with
35 the maximum limits.

1 5. The authority shall reject an application for any of the
2 following reasons:

3 a. The applicant failed to comply with any of the
4 requirements pursuant to subsection 2.

5 b. The authority has already approved the maximum eligible
6 investment authority or the maximum credit-eligible capital
7 contributions pursuant to subsection 4.

8 6. a. If the authority rejects an application, the
9 authority shall send a notice of rejection to the applicant and
10 provide a reason for the rejection.

11 b. If the authority has rejected an application on any
12 grounds other than subsection 5, paragraph "b", the applicant
13 may provide additional information to the authority to cure
14 the defects in the application. All additional information
15 must be received by the authority within fifteen business days
16 from the date the authority sent the notice of rejection to
17 the applicant. The authority shall review and reconsider,
18 within the time frame adopted by rule by the authority, any
19 application for which additional information is provided within
20 the fifteen business days. If an application is approved by
21 the authority after review and reconsideration, the application
22 shall be considered complete as of its original date of
23 submission.

24 c. If an applicant does not submit additional information
25 within fifteen business days from the date the authority sent
26 the applicant the notice of rejection, the applicant may submit
27 a new application at any time pursuant to subsection 2 and the
28 application shall be reviewed by the authority pursuant to
29 subsection 3.

30 7. a. If the authority approves an application, the
31 authority shall send a notice to the applicant certifying all
32 of the following:

33 (1) The applicant as a rural business growth fund.

34 (2) The growth fund's eligible investment authority and
35 required credit-eligible contributions.

1 (3) The required number of jobs created and the required
2 number of jobs retained based on the number submitted in the
3 applicant's application, prorated if the growth fund's eligible
4 investment authority is reduced pursuant to subsection 4.

5 b. Within forty-five calendar days of the date the authority
6 sent the notice of certification pursuant to paragraph "a",
7 the rural business growth fund shall comply with all of the
8 following requirements:

9 (1) Collect all credit-eligible capital contributions
10 from each investor whose affidavit was included in the growth
11 fund's application. If the growth fund's requested eligible
12 investment authority has been proportionally reduced pursuant
13 to subsection 4, each investor's required credit-eligible
14 capital contribution shall be reduced by the same proportion.

15 (2) Collect one or more equity investments contributed
16 directly or indirectly by affiliates of the growth fund,
17 including employees and principals of such affiliates, that
18 must equal at least ten percent of the growth fund's eligible
19 investment authority.

20 (3) Collect one or more investments of cash that, when added
21 to the contributions collected under subparagraphs (1) and (2),
22 equal the growth fund's total eligible investment authority.

23 c. Within sixty-five calendar days of the date the authority
24 sent the notice of certification pursuant to paragraph "a",
25 the rural business growth fund shall comply with all of the
26 following requirements:

27 (1) Submit documentation to the authority sufficient to
28 prove to the satisfaction of the authority that the growth fund
29 has collected amounts described in paragraph "b", subparagraphs
30 (1), (2), and (3).

31 (2) Submit documentation to the authority that identifies
32 all affiliates of an investor described in paragraph "b",
33 subparagraph (1), that may be eligible to claim a tax credit
34 issued by the authority pursuant to section 15.284, subsection
35 1.

1 8. If a growth fund fails to comply with subsection 7,
2 paragraph "b" or "c", the growth fund's certification shall
3 lapse. Any eligible investment authority and credit-eligible
4 capital contributions that lapse pursuant to this subsection
5 shall not count toward the maximum limits on eligible
6 investment authority and credit-eligible capital contributions
7 pursuant to subsection 4. If a growth fund's eligible
8 investment authority lapses pursuant to this subsection, the
9 authority shall first award the lapsed eligible investment
10 authority pro rata to each rural business growth fund that
11 was awarded less than the eligible investment authority that
12 the rural business growth fund sought in the growth fund's
13 application. A rural business growth fund that is awarded
14 lapsed eligible investment authority pro rata must comply with
15 the requirements of subsection 7, paragraph "b", as related to
16 the additional eligible investment authority. The authority
17 may award any remaining lapsed eligible investment authority to
18 new applicants until the maximum limits on eligible investment
19 authority and credit-eligible capital contributions pursuant
20 to subsection 4 are met.

21 9. After a growth fund's successful submission to the
22 authority of the required documentation pursuant to subsection
23 7, paragraph "c", subparagraphs (1) and (2), the growth fund
24 shall enter into an agreement with the authority that specifies
25 the requirements that must be met for successful completion
26 of the program. At a minimum, the agreement shall contain
27 provisions addressing all of the following:

28 a. The legal name of the growth fund.

29 b. The growth fund's closing date.

30 c. The growth fund's eligible investment authority as
31 certified by the authority.

32 d. Each investor of the growth fund and each investor's
33 credit-eligible capital contribution.

34 e. The minimum number of jobs that must be created and the
35 minimum number of jobs that must be retained as a result of

1 the growth fund's growth investments to avoid paying state
2 reimbursement pursuant to section 15.288.

3 *f.* Revocation and recapture of tax credits pursuant to
4 section 15.285.

5 *g.* Any terms deemed necessary by the authority to effect
6 compliance with the program requirements pursuant to this part.

7 **Sec. 4. NEW SECTION. 15.284 Tax credits.**

8 1. After an agreement is executed pursuant to section
9 15.283, subsection 9, the authority shall issue a tax credit
10 certificate to each investor whose affidavit was included
11 in the growth fund's application and whose credit-eligible
12 capital contribution was collected pursuant to section
13 15.283, subsection 7, paragraph "b", subparagraph (1). The
14 tax credit certificate shall specify the amount of the
15 tax credit allocated to that investor as a result of the
16 investor's credit-eligible capital contribution. The tax
17 credit allocated to any one investor shall be equal to the
18 investor's credit-eligible capital contribution to the growth
19 fund. The tax credit certificate shall contain the taxpayer's
20 name, address, tax identification number, the amount of the tax
21 credit the eligible taxpayer may claim against the insurance
22 premium tax and insurance retaliatory premium tax imposed
23 in chapter 432, the name of the rural business growth fund
24 associated with the tax credit, and any other information
25 required by the department of revenue.

26 2. Twenty-five percent of a tax credit issued to an investor
27 pursuant to subsection 1 may be used in each taxable year
28 beginning in the calendar year following the second anniversary
29 of the closing date of the growth fund in which the investor
30 made the credit-eligible capital contribution, and concluding
31 in the calendar year following the sixth anniversary of that
32 closing date, exclusive of the amount of tax credit carried
33 forward pursuant to subsection 4.

34 3. *a.* A tax credit issued under this part is not
35 refundable and shall not be sold, transferred, or allocated

1 by the investor to any person other than an affiliate of the
2 investor that was an affiliate at the time of the growth fund's
3 submission of the investor's affidavit pursuant to subsection
4 15.283, subsection 2, paragraph "f".

5 *b.* Within ninety calendar days of the sale, transfer, or
6 allocation of a tax credit, the affiliate shall submit the tax
7 credit certificate to the department of revenue along with a
8 statement containing the affiliate's name, tax identification
9 number, address, and any other information required by the
10 department of revenue.

11 *c.* Within thirty calendar days of receiving the tax credit
12 certificate and the affiliate's statement, the department of
13 revenue shall issue the affiliate a replacement tax credit
14 certificate. The replacement tax credit certificate must
15 contain all of the information required for the original tax
16 credit certificate and must have the same expiration date that
17 appeared on the original tax credit certificate.

18 4. To claim a tax credit under this section, a taxpayer
19 shall submit the tax credit certificate with the taxpayer's
20 tax return for each taxable year in which the tax credit is
21 claimed. Any tax credit in excess of the taxpayer's tax
22 liability for the tax year may be carried forward to the
23 taxpayer's tax liability for subsequent years until the tax
24 credit is depleted.

25 Sec. 5. NEW SECTION. 15.285 Revocation and recapture of tax
26 credits.

27 1. The authority shall recapture any tax credits used by
28 a taxpayer and shall revoke any tax credits issued pursuant
29 to section 15.284, subsection 1, if, before a rural business
30 growth fund exits the program pursuant to section 15.287, any
31 of the following occur:

32 *a.* The growth fund cannot provide documentation to the
33 authority to substantiate to the satisfaction of the authority
34 all of the following:

35 (1) That the growth fund, within two years after the growth

1 fund's closing date, has invested a minimum of two-thirds of
2 the growth fund's eligible investment authority in growth
3 investments.

4 (2) That the growth fund, within three years after the
5 growth fund's closing date, has invested one hundred percent
6 of the growth fund's eligible investment authority in growth
7 investments.

8 (3) That the growth fund, after investing one hundred
9 percent of the growth fund's eligible investment authority
10 in growth investments within three years after the growth
11 fund's closing date, has maintained growth investments equal to
12 one hundred percent of the growth fund's eligible investment
13 authority at all times up to the sixth anniversary after the
14 growth fund's closing date. For purposes of this subparagraph,
15 a growth investment is maintained even if it is sold or repaid,
16 as long as the growth fund reinvests an amount equal to the
17 growth investment returned or recovered from the original
18 growth investment, exclusive of any profits realized, in other
19 growth investments in this state within the twelve consecutive
20 months immediately after the date of the return or recovery
21 of such growth investment. Amounts received periodically
22 by a growth fund are deemed continuously invested in growth
23 investments if the amounts are reinvested by the growth fund in
24 one or more qualified businesses by the end of the following
25 calendar year.

26 *b.* The growth fund makes a growth investment in a qualified
27 business that directly, or indirectly through an affiliate,
28 owns, has the right to acquire an ownership interest in, makes
29 a loan to, or makes an investment in, the growth fund, an
30 affiliate of the growth fund, or an investor in the growth
31 fund. This paragraph shall not apply to investments in
32 publicly traded securities by a qualified business, or to an
33 owner or an affiliate of the qualified business. For purposes
34 of this paragraph, a growth fund shall not be considered an
35 affiliate of a qualified business solely because of the growth

1 fund's growth investment in the qualified business.

2 *c.* The growth fund, before exiting the program pursuant to
3 section 15.287, makes a distribution or payment that results
4 in the growth fund having less than one hundred percent of its
5 initial investment authority invested in growth investments in
6 this state, available for growth investments, or held in cash
7 and marketable securities.

8 2. The maximum amount of a growth investment in a qualified
9 business, including any amounts invested in affiliates of the
10 qualified business, that a growth fund may count toward the
11 growth fund's satisfaction of the requirements pursuant to
12 subsection 1, paragraph "a", subparagraphs (2) and (3), is
13 the greater of twenty percent of the growth fund's eligible
14 investment authority and five million dollars, excluding any
15 amounts reinvested in a qualified business.

16 3. Before revoking or recapturing a tax credit, the
17 authority shall provide notice to the growth fund of the reason
18 for the pending revocation or recapture. The growth fund shall
19 have ninety calendar days after the date the authority sends
20 the notice to address to the satisfaction of the authority any
21 issues identified in the notice. Failure of the growth fund to
22 satisfactorily address any issues in the notice shall result in
23 revocation or recapture of the tax credit.

24 4. The authority shall not revoke or recapture a tax credit
25 for any action of a growth fund that occurs after the growth
26 fund has exited the program pursuant to section 15.287. This
27 subsection shall not prohibit the authority from revoking or
28 recapturing a tax credit due to an action of a growth fund
29 pursuant to subsection 1 that occurs before the date the growth
30 fund exits the program, even if the growth fund's action is
31 discovered after the date the growth fund exits the program.

32 Sec. 6. NEW SECTION. 15.286 Annual report.

33 On or before March 31, unless a growth fund has exited the
34 program pursuant to section 15.287, each growth fund shall
35 submit an annual report to the authority in the form and manner

1 the authority prescribes that covers the preceding calendar
2 year. The report must include each of the growth fund's growth
3 investments and must contain all of the following information:

4 1. Financial statements that provide evidence of each
5 growth investment.

6 2. Evidence that the growth fund is in compliance with
7 applicable investment requirements pursuant to section 15.285,
8 subsection 1, paragraph "a", subparagraphs (1), (2), and (3).

9 3. The name, location, and industry for each qualified
10 business that received a growth investment, and evidence that
11 the business met the requirements to be a qualified business at
12 the time the growth investment was made.

13 4. The number of employees at each qualified business on
14 the date of the growth fund's initial growth investment in the
15 qualified business.

16 5. The number of jobs created at each qualified business and
17 the average annual salary for the jobs created.

18 6. The number of jobs retained at each qualified business
19 and the average annual salary for the jobs retained. The
20 number of jobs retained at a qualified business may not exceed
21 the number of jobs retained at the same qualified business on
22 the first annual report submitted by the growth fund.

23 7. Any other information the authority requires.

24 **Sec. 7. NEW SECTION. 15.287 Exiting the program.**

25 1. On or after the sixth anniversary of a rural business
26 growth fund's closing date, in the form and manner the
27 authority prescribes, the growth fund may apply to the
28 authority to exit the program. The growth fund's application
29 must include the state reimbursement calculation pursuant to
30 section 15.288.

31 2. The growth fund shall be eligible to exit the program
32 if a tax credit associated with the growth fund has not been
33 revoked or recaptured pursuant to section 15.285.

34 3. Within the time frame adopted by rule by the authority,
35 the authority shall send notice to the growth fund of the

1 authority's determination regarding the growth fund's
2 application and confirmation of the state reimbursement the
3 growth fund owes pursuant to section 15.288. If the authority
4 denies the growth fund's application, the notice shall include
5 the reasons for the denial. If the authority approves the
6 growth fund's application, the growth fund is deemed to have
7 exited the program on the date the authority sends notice
8 to the growth fund. If the growth fund owes the state
9 reimbursement, the growth fund shall be prohibited from making
10 any distributions to any equity holders of the fund until the
11 growth fund has remitted the state reimbursement amount to the
12 authority. All state reimbursement amounts remitted to the
13 authority shall be deposited in the general fund of the state.

14 Sec. 8. NEW SECTION. 15.288 State reimbursement
15 calculation.

16 1. A state reimbursement shall be calculated any time a
17 rural business growth fund exits the program or any time a
18 rural business growth fund proposes to make a distribution to
19 the growth fund's equity holders. The state reimbursement
20 shall equal the proposed distribution multiplied by one minus a
21 fraction that is composed of the following:

22 a. The numerator shall be the aggregate number of jobs
23 created plus the number of jobs retained as reported pursuant
24 to section 15.286, subsections 5 and 6, with the following
25 modifiers.

26 (1) Any job created or retained at a qualified business
27 located in a rural area shall be counted as one job.

28 (2) Any job created or retained at a qualified business
29 located in a rural area and in a county with a population of
30 less than thirty thousand, as determined by the most recent
31 population estimates issued by the United States bureau of
32 census, shall be counted as one and one-half of a job.

33 (3) Any job created or retained at a qualified business
34 located in an area other than an area in subparagraph (1) or
35 (2) shall be counted as one-half of a job.

1 development authority for specific capital contributions made
2 to certified rural business growth funds for investment in
3 qualified businesses.

4 The bill directs the economic development authority
5 (authority) to begin accepting Iowa rural development tax
6 credit program (program) applications beginning January 4,
7 2021.

8 The bill provides that a person seeking certification
9 as a rural business growth fund (growth fund) must apply
10 to the authority and that the application must include the
11 eligible investment authority sought by the applicant, a copy
12 of the applicant's license as a rural business investment
13 company under 7 U.S.C. §2009cc(14) or as a small business
14 investment company under 15 U.S.C. §681, documentation that
15 establishes that at least one principal of the applicant
16 has been an officer or an employee of the rural business
17 investment company, the small business investment company, or
18 an affiliate thereof, for a minimum of four years prior to
19 the date of application, a revenue impact assessment for the
20 applicant's proposed growth investments as determined by an
21 econometric analysis conducted by a third-party independent
22 econometric firm, the number of jobs created and the number
23 of jobs retained assumed in the revenue impact assessment, a
24 signed affidavit from each investor that states the amount of
25 the credit-eligible capital contribution that the investor
26 has committed to the applicant's proposed growth fund, and
27 a nonrefundable \$5,000 application fee. The bill defines
28 "credit-eligible capital contribution" as an investment of
29 cash by a person in a growth fund that is eligible for a tax
30 credit issued by the authority. The investment must be used
31 to purchase either an equity interest in the growth fund or a
32 debt instrument, at par value or premium, issued by the growth
33 fund that has a maturity date at least six years after the
34 growth fund's closing date. "Eligible investment authority" is
35 defined in the bill as the amount of investment authority that

1 the authority certifies for a specific growth fund.

2 The bill requires the authority to review each application
3 on a first-come, first-served basis and to make a determination
4 to approve or deny each application within the time frame
5 adopted by rule by the authority. The authority shall not
6 approve more than \$100 million in eligible investment authority
7 and not more than \$60 million in credit-eligible capital
8 contributions.

9 The authority must reject an application if the applicant
10 fails to submit any of the required information, or if the
11 authority has already approved the maximum eligible investment
12 authority or the maximum credit-eligible capital contributions.
13 If the authority rejects an application, the authority must
14 send a notice of rejection to the applicant, and provide a
15 reason for the rejection. If an application has been rejected
16 because the applicant failed to submit all of the required
17 information, the applicant has 15 days to provide additional
18 information to cure any defects in the application. The
19 authority shall review and reconsider, within the time frame
20 adopted by rule by the authority, any application for which
21 additional information is provided within the 15 business days.
22 If an application is approved by the authority after review and
23 reconsideration, the application shall be considered complete
24 as of its original date of submission.

25 If the authority approves an application, the authority
26 must send a notice to the applicant certifying the applicant
27 as a rural business growth fund, the growth fund's eligible
28 investment authority, and the required number of jobs created
29 and the required number of jobs retained based on the number
30 submitted in the applicant's application. Within 45 days of
31 the date the authority sent the notice of certification, the
32 growth fund is required to collect all credit-eligible capital
33 contributions from each investor whose affidavit was included
34 in the growth fund's application, collect one or more equity
35 investments contributed directly or indirectly by affiliates

1 of the growth fund, including employees and principals of
2 such affiliates, that equal at least 10 percent of the growth
3 fund's eligible investment authority, and collect one or more
4 investments of cash that when added to the credit-eligible
5 capital contributions and the equity investments equal the
6 growth fund's eligible investment authority. Within 65 days
7 of the date the authority sent the notice of certification,
8 the growth fund must submit documentation to the authority
9 to prove that the appropriate amounts have been collected
10 by the growth fund, and documentation that identifies all
11 affiliates of the investor that may be eligible to claim a
12 tax credit issued by the authority. If the growth fund fails
13 to comply with the collection and documentation requirements,
14 all eligible investment authority and credit-eligible capital
15 contributions lapse. Eligible investment authority and
16 credit-eligible capital contributions that lapse do not count
17 toward the maximum limits on eligible investment authority and
18 credit-eligible capital contributions and may be awarded by the
19 authority as outlined in the bill.

20 If a growth fund successfully complies with the collection
21 and documentation requirements, the growth fund must enter
22 into an agreement with the authority that specifies the
23 requirements that must be met for successful completion of
24 the program. The agreement must contain, at a minimum, the
25 legal name of the growth fund, the growth fund's closing date,
26 the growth fund's eligible investment authority as certified
27 by the authority, each investor of the growth fund and each
28 investor's credit-eligible capital contribution, the minimum
29 number of jobs that must be created and the minimum number of
30 jobs that must be retained as a result of the growth fund's
31 growth investments to avoid paying state reimbursement, and a
32 provision related to revocation and recapture of tax credits if
33 the growth fund fails to meet the applicable program investment
34 requirements.

35 After the agreement is executed, the authority must issue

1 a tax credit certificate to each investor whose affidavit
2 was included in the growth fund's application and whose
3 credit-eligible capital contribution was collected by the
4 growth fund. The certificate must specify the amount of tax
5 credit allocated to that investor and the amount of the tax
6 credit the eligible taxpayer may claim against the insurance
7 premium tax and insurance retaliatory premium tax imposed in
8 Code chapter 432. The tax credit allocated to any one investor
9 is equal to the investor's credit-eligible capital contribution
10 to the growth fund. An investor may use 25 percent of the tax
11 credit in each taxable year beginning in the calendar year
12 following the second anniversary of the growth fund's closing
13 date and ending in the calendar year following the sixth
14 anniversary of the closing date. Any tax credit in excess of
15 the taxpayer's tax liability for a tax year may be carried
16 forward to the taxpayer's tax liability for subsequent tax
17 years until the tax credit is depleted.

18 The tax credits are not refundable and cannot be sold,
19 transferred, or allocated by the investor to any person other
20 than an affiliate of the investor. The affiliate must submit
21 the tax credit certificate within 90 days to the department
22 of revenue (department) along with a statement containing the
23 affiliate's name, tax identification number, address, and any
24 other information required by the department. The department
25 must issue the affiliate a replacement tax credit certificate
26 with the same expiration date that appeared on the original tax
27 credit certificate.

28 The authority shall revoke or recapture a tax credit if,
29 before a growth fund exits the program, the growth fund cannot
30 provide documentation to the authority to substantiate that the
31 growth fund, within two years after the growth fund's closing
32 date, has invested a minimum of two-thirds of the growth fund's
33 investment authority in growth investments; that the growth
34 fund, within three years after the growth fund's closing date,
35 has invested 100 percent of the growth fund's investment

1 authority in growth investments; that the growth fund, after
2 investing 100 percent of the growth fund's investment authority
3 in growth investments within three years after the growth
4 fund's closing date, has maintained growth investments equal to
5 100 percent of its investment authority at all times up to the
6 sixth anniversary after the growth fund's closing date. The
7 bill specifies that a growth investment is maintained even if
8 it is sold or repaid, as long as the growth fund reinvests an
9 amount equal to the growth investment returned or recovered
10 from the original investment, exclusive of any profits
11 realized, in other growth investments in this state within the
12 12 consecutive months immediately after the date of the return
13 or recovery of such growth investment. The bill also specifies
14 that amounts received periodically by a growth fund are deemed
15 continuously invested in growth investments if the amounts
16 are reinvested by the growth fund in one or more qualified
17 businesses by the end of the following calendar year.

18 The authority must also revoke or recapture a tax credit
19 if, before a growth fund exits the program, the growth
20 fund makes a growth investment in a qualified business that
21 directly, or indirectly through an affiliate, owns, has the
22 right to acquire an ownership interest in, makes a loan to,
23 or makes an investment in, the growth fund, an affiliate of
24 the growth fund, or an investor in the growth fund. This does
25 not apply to investments in publicly traded securities by a
26 qualified business, or to an owner or an affiliate of the
27 qualified business. Further, a growth fund is not considered
28 an affiliate of a qualified business solely because of its
29 growth investment in the qualified business. The authority
30 is also required to revoke or recapture a tax credit if the
31 growth fund, before it exits the program, makes a distribution
32 or payment that results in the growth fund having less than 100
33 percent of its initial investment authority invested in growth
34 investments in this state, available for growth investments,
35 or held in cash and marketable securities. A growth fund may

1 count the greater of 20 percent of the growth fund's eligible
2 investment authority and \$5 million, excluding any amounts
3 reinvested in a qualified business, toward the growth fund's
4 satisfaction of the investment requirements. Before the
5 authority revokes or recaptures a tax credit, the authority
6 must provide notice to the growth fund of the reason for the
7 pending revocation or recapture and the growth fund has 90 days
8 to address any issues identified in the notice. Failure of the
9 growth fund to address any of the issues in the notice results
10 in revocation or recapture of the tax credit.

11 The bill prohibits the authority from revoking or
12 recapturing a tax credit for any action of a growth fund that
13 occurs after the growth fund has exited the program. The bill
14 does not, however, prohibit the authority from revoking a tax
15 credit due to an action of a growth fund that occurs before the
16 growth fund exits the program, even if the growth fund's action
17 is discovered after the growth fund exits the program.

18 On or after the sixth anniversary of a growth fund's closing
19 date, the growth fund may apply to the authority to exit the
20 program. A growth fund is eligible to exit the program if a
21 tax credit associated with the growth fund has not been revoked
22 or recaptured. The growth fund's application must include the
23 state reimbursement calculation. The state reimbursement owed
24 by a rural business growth fund to the authority is calculated
25 as detailed in the bill. Within the time frame adopted by rule
26 by the authority, the authority shall send notice to the growth
27 fund of the authority's determination regarding the application
28 and confirmation of the state reimbursement owed by the growth
29 fund. If the authority denies the application, the notice must
30 include the reasons for the denial. If the authority approves
31 the application, the growth fund is deemed to have exited the
32 program on the date the notice is sent by the authority to the
33 growth fund. If the growth fund owes the state reimbursement,
34 the growth fund is prohibited from making any distributions to
35 equity holders of the fund until the state reimbursement amount

1 has been remitted to the authority. "Equity holder" is defined
2 in the bill as a person that makes a credit-eligible capital
3 contribution, an equity investment, or a cash investment in
4 a rural business growth fund. The bill specifies that all
5 state reimbursement amounts remitted to the authority shall be
6 deposited in the general fund of the state.

7 Unless a growth fund has exited the program, the growth
8 fund must submit an annual report to the authority that
9 covers the preceding calendar year. The report must include
10 documentation for each of the growth fund's growth investments
11 and must include financial statements that provide evidence
12 of each growth investment, evidence that the growth fund is
13 in compliance with applicable investment requirements; the
14 name, location, and industry for each qualified business that
15 received a growth investment; evidence that each business met
16 the requirements to be a qualified business at the time the
17 growth investment was made; the number of employees at each
18 qualified business on the date of the growth fund's initial
19 growth investment; the number of jobs created at each qualified
20 business; the average annual salary for the jobs created; the
21 number of jobs retained at each qualified business; and the
22 average annual salary for the jobs retained.

23 The bill provides that the only remedies for a breach or
24 default of any of the terms of the program by a growth fund
25 are revocation or recapture of tax credits and the state
26 reimbursement as detailed in the bill.

27 The bill requires the authority, in conjunction with the
28 department, to adopt rules as necessary to implement and
29 administer the program.