

Senate Bill 133

By: Senators Walker III of the 20th, Shafer of the 48th, Hill of the 6th, Heath of the 31st, Wilkinson of the 50th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to
 2 general provisions regarding insurance, so as to establish an eligible business investment; to
 3 provide for a short title; to provide for definitions; to provide that certain entities may earn
 4 credit against the entity's state tax liability; to disallow refundability and sale on the open
 5 market of claimed credits; to provide for certification of qualified capital investments; to
 6 provide for recapture of credit claimed under certain circumstances; to provide for a request
 7 of determination for eligibility; to provide for reporting; to amend Article 4 of Chapter 13
 8 of Title 48 of the Official Code of Georgia Annotated, relating to the corporate net worth tax,
 9 so as to make such tax inapplicable to corporations worth less than a certain amount; to
 10 provide for related matters; to provide for an effective date and applicability; to repeal
 11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **PART I**

14 **SECTION 1-1.**

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

17 "33-1-25.

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

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

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

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

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

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

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

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

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

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

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

46 (A) Has less than 250 employees; and

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

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

63 (7) 'Eligible distribution' means:

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

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

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

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

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

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

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

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

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

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

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

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

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

131 (A) The amount of capital investment requested;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

285 **PART II**

286 **SECTION 2-1.**

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

290 "48-13-71.

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

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

296 **SECTION 2-2.**

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

300 "48-13-72.

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

307 **SECTION 2-3.**

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

310 "48-13-73.

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

| | |
|--|---------------|
| 313 <u>Corporations with Net Worth</u> | |
| 314 <u>Including Issued Capital Stock,</u> | <u>Amount</u> |
| 315 <u>Paid-in Surplus, and Earned Surplus</u> | <u>of Tax</u> |

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

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

343 **PART III**
 344 **SECTION 3-1.**

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

349

SECTION 3-2.

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