

The House Committee on Ways and Means offers the following substitute to SB 133:

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

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

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

(3) 'Authority' means the OneGeorgia Authority established under Chapter 34 of Title 50.

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

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

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

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

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

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

(A) Has less than 250 employees; and

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

(ii) Produces or provides any goods or services produced in Georgia normally used by farmers, ranchers, or producers and harvesters of aquatic products in their business operations, or to improve the welfare or livelihood of such persons, or is 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 authority 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 said business by a rural fund shall remain classified as an eligible business and may receive follow-on investments from any rural fund, and such follow-on investments shall be qualified investments even though such business

may not meet the definition of an eligible business at the time of such follow-on investments.

(7) 'Eligible distribution' means:

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

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

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

(8) 'Principal business operations' means the location where at least 60 percent of a business's employees work or where employees who are paid at least 60 percent 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 180 days after receiving a qualified investment.

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

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

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

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

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

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

(c) 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 Code 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 Code section is not required to pay any additional tax that may arise as a result of claiming such credit.

(d) No credit claimed under this Code section shall be refundable or saleable on the open market. Credits earned by or allocated to a partnership, limited liability company, or S-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 authority 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 Code section.

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

(A) The amount of capital investment requested;

(B) A copy of the applicant's or an affiliate of the applicant's license as a rural business investment company under 7 U.S.C. Section 2009cc or as a small business investment

company under 15 U.S.C. Section 681 and a certificate executed by an executive officer of the applicant attesting that such license remains in effect and has not been revoked;
(C) Evidence that, as of the date the application is submitted, the applicant or affiliates of the applicant have invested at least \$100 million in nonpublic companies located in rural areas within the United States;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The rural fund, after satisfying subparagraph (A) of this paragraph, fails to maintain qualified investments equal to 100 percent of its capital investment authority until the fifth anniversary of the credit allowance date. For the purposes of this subsection, a qualified investment is considered maintained even if the qualified investment was sold or repaid so long as the rural fund reinvests an amount equal to the capital returned or recovered by the rural fund from the original investment, exclusive of any profits realized, in other qualified investments in this state within 12 months of the receipt of such capital. Amounts received periodically by a rural fund shall be treated as continually invested in qualified investments if the amounts are reinvested

in one or more qualified investments by the end of the following calendar year. A rural fund shall not be required to reinvest capital returned from qualified investments after the fourth anniversary of the credit allowance date, and such qualified investments shall be considered held continuously by the rural fund through the fifth anniversary of the credit allowance date;

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

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

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

(g) Enforcement of each of the recapture provisions of paragraph (1) of subsection (f) of this Code 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 months from the date of such notice to cure the noncompliance.

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

(1) 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

(2) 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 Code section.

(i) On or after the sixth anniversary of the closing date, a rural fund may apply to the authority to exit the program and no longer be subject to regulation under this Code section. The authority shall respond to the exit application within 30 days of receipt. In evaluating the exit application, the fact that no credits have been recaptured and that the rural fund has not received a notice of recapture that has not been cured pursuant to subsection (g) of this Code section shall be sufficient evidence to prove that the rural fund is eligible for exit. The authority shall not unreasonably deny an exit application submitted under this subsection. If the exit application is denied, the notice shall include the reasons for the determination. The state shall receive a 10 percent share of any distributions

annually from a rural fund that made a capital investment, other than the amount in excess of equity invested in the rural fund and tax distributions made by the rural fund. A rural fund shall distribute all amounts not held in qualified investments no later than the fourteenth anniversary of the closing date. No claimant of credits pursuant to subsection (c) of this Code section shall receive distributions in excess of an amount that would result in an internal rate of return on capital invested that is more than 20 percent if the number of jobs created is:

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

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

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

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

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

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

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

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

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

(F) Such other information required by the authority.

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

314	<u>Corporations with Net Worth</u>	
315	<u>Including Issued Capital Stock,</u>	<u>Amount</u>
316	<u>Paid-in Surplus, and Earned Surplus</u>	<u>of Tax</u>
317	Not exceeding \$10,000.00	\$ 10.00
318	Over \$10,000.00 and not exceeding \$25,000.00	20.00
319	Over \$25,000.00 and not exceeding \$40,000.00	40.00
320	Over \$40,000.00 and not exceeding \$60,000.00	60.00
321	Over \$60,000.00 and not exceeding \$80,000.00	75.00
322	Over \$80,000.00 and not exceeding \$100,000.00	100.00
323	Over \$100,000.00 and not exceeding \$150,000.00	\$ 125.00
324	Over \$150,000.00 and not exceeding \$200,000.00	150.00
325	Over \$200,000.00 and not exceeding \$300,000.00	200.00
326	Over \$300,000.00 and not exceeding \$500,000.00	250.00
327	Over \$500,000.00 and not exceeding \$750,000.00	300.00
328	Over \$750,000.00 and not exceeding \$1,000,000.00	500.00
329	Over \$1,000,000.00 and not exceeding \$2,000,000.00	750.00
330	Over \$2,000,000.00 and not exceeding \$4,000,000.00	1,000.00
331	Over \$4,000,000.00 and not exceeding \$6,000,000.00	1,250.00
332	Over \$6,000,000.00 and not exceeding \$8,000,000.00	1,500.00
333	Over \$8,000,000.00 and not exceeding \$10,000,000.00	1,750.00
334	Over \$10,000,000.00 and not exceeding \$12,000,000.00	2,000.00
335	Over \$12,000,000.00 and not exceeding \$14,000,000.00	2,500.00
336	Over \$14,000,000.00 and not exceeding \$16,000,000.00	3,000.00
337	Over \$16,000,000.00 and not exceeding \$18,000,000.00	3,500.00
338	Over \$18,000,000.00 and not exceeding \$20,000,000.00	4,000.00
339	Over \$20,000,000.00 and not exceeding \$22,000,000.00	4,500.00
340	Over \$22,000,000.00	5,000.00
341	(b) With respect to any corporation coming into existence or becoming subject to the tax	
342	for the first time for an initial taxable period of less than six months, the tax imposed for	
343	such period shall be 50 percent of the tax imposed by this article for an entire year."	

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PART III

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SECTION 3-1.

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(a) Part I of this Act shall become effective on July 1, 2017, and shall apply to all tax years

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beginning on or after January 1, 2018.

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(b) Part II of this Act shall become effective on January 1, 2018, and shall apply to all tax

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years beginning on or after such date.

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SECTION 3-2.

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