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**S. 407**

**STATUS INFORMATION**

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Currently residing in the Senate Committee on **Finance**

Summary: SC Agribusiness and Rural Jobs Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/14/2017 Senate Introduced and read first time ([Senate Journal‑page 9](file:///h:\sj\20170214.docx))

2/14/2017 Senate Referred to Committee on **Finance** ([Senate Journal‑page 9](file:///h:\sj\20170214.docx))

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**VERSIONS OF THIS BILL**

[2/14/2017](file:///p:\pprever\2017-18\407_20170214.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 69 TO TITLE 12 SO AS TO ENACT THE “SOUTH CAROLINA AGRIBUSINESS AND RURAL JOBS ACT”, TO PROVIDE DEFINITIONS, TO PROVIDE FOR AN APPLICATION AND APPROVAL PROCESS, TO ALLOW FOR A TAX CREDIT, TO PROVIDE FOR THE REVOCATION OF TAX CREDIT CERTIFICATES, AND TO REQUIRE CERTAIN REPORTING.

Whereas, rural businesses, including agribusinesses, in this State have found it difficult to attract capital necessary to make investments that would stimulate rural economic development activity and create new jobs for the rural citizens of this State; and

Whereas, a need exists to attract capital to rural areas that promotes the retention and expansion of existing jobs, stimulates the creation of new jobs, attracts new business and industry to the State, and stimulates growth in businesses that are prepared to make meaningful investments and foster job creation in South Carolina; and

Whereas, through the establishment of an agribusiness and rural business tax credit program, South Carolina can take steps to attract capital to stimulate business development in rural areas, retain and attract new agribusinesses and rural businesses and industry to the State, create good‑paying rural jobs, and stimulate growth in agribusinesses and rural businesses that are prepared to make impactful economic development investments. Now, therefore,

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

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

“CHAPTER 69

South Carolina Agribusiness and Rural Jobs Act

Section 12‑69‑100. This chapter may be referred to and cited as the ‘South Carolina Agribusiness and Rural Jobs Act’.

Section 12‑69‑110. For purposes of this chapter:

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

(2) ‘Agribusiness and rural growth fund’ or ‘fund’ means an entity certified by the department pursuant to the provisions of Section 12‑69‑120.

(3) ‘Business day’ means Monday through Friday excluding state holidays and federal holidays.

(4) ‘Closing date’ means the date on which an agribusiness and rural growth fund has collected all of its investment authority pursuant to the provisions of Section 12‑69‑120(F).

(5) ‘Credit‑eligible capital contribution’ means an investment of cash by a person subject to taxes and fees pursuant to the provisions of Section 12‑6‑530 or Chapter 7, Title 38, in an agribusiness and rural growth fund that equals the amount specified on a tax credit certificate issued by the department pursuant to the provisions of Section 12‑69‑120(E). The investment must purchase an equity interest in the fund or purchase, at par value or premium, a debt instrument that has a maturity date at least five years from the closing date.

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

(7) ‘Eligible business concern’ means a business that, at the time of the initial investment in the company by an agribusiness and rural growth fund:

(a) has less than two hundred fifty employees and not more than fifteen million dollars in net income for the preceding taxable year;

(b) has its principal business operations in one or more rural areas in this State; and

(c) is engaged in industries related to agribusiness, as designated by the Department of Agriculture, manufacturing, plant sciences, services, technology, or, if not engaged in one of the identified industries, the Department of Agriculture makes a determination that the investment is highly beneficial to the economic growth of this State.

(8) ‘Eligible investment’ means any capital or equity investment in an eligible business concern or any loan to an eligible rural business concern with a stated maturity at least one year after the date of issuance.

(9) ‘Investment authority’ means the amount stated on the notice issued by the department pursuant to the provisions of Section 12‑69‑120(E) certifying the agribusiness and rural growth fund. At least sixty percent of the fund’s investment authority must be comprised of credit‑eligible capital contributions.

(10) ‘Principal business operations’ means the place where at least sixty percent of employees work or where employees that are paid at least sixty percent of the payroll work. An out‑of‑state business that has agreed to relocate employees using the proceeds of an eligible investment to establish its principal business operations in a rural area in this State is considered to have its principal business operations in this new location provided it satisfies this definition within one hundred eighty days after receiving the eligible investment, unless the department agrees to a later date.

(11) ‘Rural area’ means:

(a) a county of this State that has a population of less than seventy‑five thousand according to the latest decennial census of the United States; or

(b) an area determined to be rural in character by the Under Secretary of Agriculture for Rural Development within the United States Department of Agriculture.

Section 12‑69‑120. (A) Beginning January 1, 2018, the department shall accept agribusiness and rural growth fund approval applications. The application must include:

(1) the total investment authority sought by the applicant under the business plan and the total credit sought, which may not exceed sixty percent of the investment authority sought;

(2) 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. 2009cc, or as a small business investment company under 15 U.S.C. 681;

(3) evidence that as of the date the application is submitted, the applicant or affiliates of the applicant have invested at least one hundred million dollars in nonpublic companies located in rural areas;

(4) an estimate of the number of jobs that will be created or retained in this State as a result of the applicant’s eligible investments;

(5) a business plan that includes a revenue impact assessment projecting state and local tax revenue to be generated by the applicant’s proposed eligible investments prepared by a nationally recognized third‑party independent economic forecasting firm using a dynamic economic forecasting model that analyzes the applicant’s business plan over the ten years following the date the application is submitted to the department;

(6) a signed affidavit from investors stating the amount of credit‑eligible capital contributions taxpayers commit to make; and

(7) a nonrefundable application fee of five thousand dollars.

(B) The department shall make an application determination within thirty days of receipt in the order in which the applications are received. The department shall consider applications received on the same day to have been received simultaneously. The department may not approve more than one hundred million dollars in investment authority and not more than sixty million dollars in credit‑eligible capital contributions under this section for all taxpayers in all years. If a simultaneously received request for investment authority exceeds this limitation, the department proportionally shall reduce the investment authority and the credit‑eligible capital contributions for approved applications as necessary to avoid exceeding the limit.

(C) The department shall deny an application submitted under this section if:

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

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

(3) the revenue impact assessment submitted pursuant to subsection (A)(5) does not demonstrate that the applicant’s business plan results in a positive economic impact on this State over a ten‑year period that exceeds the cumulative amount of tax credits that would be issued to the applicant’s investors pursuant to the provisions of Section 12‑69‑130 if the application is approved;

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

(5) the department has already approved the maximum amount of investment authority and credit‑eligible capital contributions allowed pursuant to subsection (B); or

(6) the credits sought exceed the limits provided for in subsection (A)(1).

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

(E) The department may not deny an agribusiness and rural growth fund application or reduce the requested investment authority for reasons other than those described in subsections (B) and (C). Upon approval of an application, the department shall provide a written approval to the applicant as an agribusiness and rural growth fund specifying the amount of the applicant’s investment authority and a tax credit certificate to an investor whose affidavit is included in the application specifying the amount of the investor’s credit‑eligible capital contribution.

(F) After receiving the approval issued pursuant to subsection (E), an agribusiness and rural growth fund shall:

(1) within sixty days:

(a) collect the credit‑eligible capital contributions from a taxpayer issued a tax credit certificate pursuant to subsection (E); and

(b) collect one or more investments of cash that, when added to the contributions collected pursuant to subitem (a), equal the fund’s investment authority. At least ten percent of the fund’s investment authority must be comprised of equity investments contributed by affiliates of the fund, including employees, officers, and directors of the affiliates; and

(2) within sixty‑five days, send to the department documentation sufficient to prove that the amounts described in item (1)(a) and (b) have been collected.

(G) If the agribusiness and rural growth fund fails to fully comply with subsection (F), the fund’s approval must lapse and the corresponding investment authority and credit‑eligible capital contributions under this subsection do not count toward the limits on the program size prescribed by subsection (B). The department first shall award lapsed investment authority pro rata to a fund that is awarded less than the requested investment authority pursuant to subsection (B), which a fund may allocate to its investors in its discretion. Any remaining investment authority may be awarded by the department to new applicants.

Section 12‑69‑130. (A) A taxpayer who makes a credit‑eligible capital contribution to an agribusiness and rural growth fund and is issued a tax credit certificate pursuant to the provisions of Section 12‑69‑120(E) is eligible to claim a tax credit. The credit may be claimed against the taxes and fees imposed by Section 12‑6‑530, Chapter 7, Title 38, or Chapter 20, Title 12. The credit may not be sold, transferred, or allocated to any other entity other than an affiliate subject to the taxes and fees imposed by Section 12‑6‑530 or Chapter 7, Title 38.

(B) On the closing date, the amount provided on the tax certificate vests.

(C) A taxpayer earning a credit pursuant to this section shall claim the credit in four equal installments beginning in year three.

(D) If the amount of the credit for a taxable year exceeds the tax otherwise due for that year, the excess must be carried forward for five years. A taxpayer claiming a credit under this section shall submit a copy of the tax credit certificate with the taxpayer’s return for the taxable year for which the credit is claimed.

Section 12‑69‑140. (A) The department shall revoke a tax credit certificate issued pursuant to the provisions of Section 12‑69‑120 if any of the following occur with respect to an agribusiness and rural growth fund before it exits the program in accordance with subsection (E) if the fund:

(1) in which the credit‑eligible capital contribution was made, does not invest one hundred percent of its investment authority in eligible investments in this State within two years of the closing date with at least twenty‑five percent of its investment authority initially invested in an eligible business concern engaged in agribusinesses, as designated by the Department of Agriculture;

(2) after satisfying item (1), fails to maintain eligible investments equal to one hundred percent of its investment authority until the sixth anniversary of the closing date. For the purposes of this item, an investment is ‘maintained’ even if the investment is sold or repaid so long as the fund reinvests an amount equal to the capital returned or recovered by the fund from the original investment, exclusive of any profits realized, in other eligible growth investments in this State within twelve months of the receipt of the capital. Amounts received periodically by a fund must be treated as continually invested in eligible investments if the amounts are reinvested in one or more eligible investments by the end of the following calendar year. A fund is not required to reinvest capital returned from eligible investments after the fifth anniversary of the closing date, and the eligible investments are considered held continuously by the fund through the sixth anniversary of the closing date;

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

(4) invests the greater of seven million dollars or twenty percent of its investment authority in the same eligible business concern, including amounts invested in affiliates of the agribusiness and rural business concern; or

(5) makes an eligible investment in an eligible business concern that directly or indirectly through an affiliate owns, has the right to acquire an ownership interest, makes a loan to, or makes an investment in the agribusiness and rural growth fund, an affiliate of the fund, or an investor in the fund. This item does not apply to investments in publicly traded securities by an eligible business concern or by its owner or affiliate. For purposes of this item, an ‘agribusiness and rural growth fund’ is not considered an affiliate of an eligible business concern as a result of its eligible investment.

(B) Before revoking one or more tax credit certificates under this section, the department shall notify the agribusiness and rural growth fund of the reasons for the pending revocation. The fund has ninety days from the date the notice is dispatched to correct any violation outlined in the notice to the satisfaction of the department and avoid revocation of the tax credit certificate.

(C) If a tax credit certificate is revoked under this section, the associated investment authority and credit‑eligible capital contributions do not count toward the limit on total investment authority and credit‑eligible capital contributions described by Section 12‑69‑120(B). The department first shall award reverted authority pro rata to a rural growth fund that was awarded less than the requested investment authority pursuant to the provisions of Section 12‑69‑120(E). The department may award any remaining investment authority to new applicants.

(D) If a tax credit certificate is revoked under this section after a tax credit has been claimed, then the taxpayer shall remit the credit amount to the department within ninety days of the revocation.

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

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

Section 12‑69‑150. An agribusiness and rural growth fund, before making an eligible investment, may request from the department a written opinion as to whether the business in which it proposes to invest is an eligible business concern. The department, not later than the fifteenth business day after the date of receipt of the request, shall notify the fund of its determination. If the department fails to notify the fund by the fifteenth business day of its determination, the business in which the fund proposes to invest is considered an eligible business concern.

Section 12‑69‑160. (A) An agribusiness and rural growth fund shall submit a report to the department on or before the fifth business day after the second anniversary of the closing date. The report must provide documentation as to the fund’s eligible investments and include:

(1) a bank statement evidencing eligible investments;

(2) the name, location, and industry of a business receiving an eligible growth investment, including either the determination letter provided by Section 12‑69‑150 or evidence that the business qualified as an eligible business concern at the time the investment was made;

(3) the number of employment positions created or retained as a result of the agribusiness and rural growth fund’s eligible investments as of the last day of the preceding calendar year; and

(4) any other information required by the department.

(B) On or before the last day of February following the year in which the report required pursuant to subsection (A) is due, the agribusiness and rural growth fund shall submit an annual report to the department including the following:

(1) the number of employment positions created or retained as a result of the fund’s eligible investments as of the last day of the preceding calendar year;

(2) the average annual salary of the positions described in subsection (B)(1); and

(3) any other information required by the department.

Section 12‑69‑170. The department may adopt rules and promulgate regulations necessary to carry out the intent and purposes of this chapter.”

SECTION 2. This act takes effect upon approval by the Governor and applies to income tax years beginning after 2017.

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