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Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Cirino and Chavez

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SUMMARY

- Authorizes an additional \$90 million in tax credits for insurance companies that invest in rural business growth funds, which must loan or invest the funds in certain businesses located in rural areas.
- Allows for investments in rural businesses with up to 299 employees, which is an increase from current law's 250 employees.
- Specifies that a rural business concern cannot use a fund's investment to refinance or buy out a previous credit-eligible investment.
- Modifies the investment criteria for the new credit allocation as follows:
 - Requires 50% of a fund's loans or investments to be in businesses principally located in a county in the Appalachian Region, and 75% in businesses principally located in a county having a population no greater than 150,000.
 - Adjusts the amount a rural business growth fund may invest in a single business.
 - Modifies the amount that a decertified fund may be required to reimburse the state if the fund's investments fail to result in a certain level of new employment.

DETAILED ANALYSIS

Rural growth investment credit

The bill authorizes an additional \$90 million in tax credits for insurance companies that make loans to or invest in **rural business growth funds**, which are investment funds certified by the Department of Development (DEV) to provide capital for businesses with substantial operations in rural areas. It also modifies the investment benchmarks and other requirements upon which the credit is contingent.

Most of the bill's changes apply only to rural business growth funds certified after the bill's effective date, which the bill refers to as **program three** funds. A few changes apply to all funds, including those certified before that date but after September 30, 2021, or **program two** funds, or before September 30, 2021, or **program one** funds.¹

Background

Taxpayers can claim the rural growth investment credit against the state's taxes on foreign and domestic insurance companies. The amount of the credit equals 100% of the insurance company's credit-eligible capital contribution to a rural business growth fund. A "credit-eligible capital contribution" is an investment of cash that either (1) purchases an equity interest in the fund or (2) provides a loan with a maturity of at least five years, level principal repayment, and repayment terms that are independent of the fund's profitability. The sum of the credit-eligible contributions collected by the rural business growth fund must comprise exactly 60% of the fund's **eligible investment authority** – which is the amount of capital it agrees to invest in or lend to eligible rural businesses.

An insurance company must claim the credit in four annual installments, each equal to 25% of its credit-eligible capital contribution. The first installment is not available until the expiration of a three-year holding period, which begins tolling after the credit-eligible contribution is approved by DEV and after all amounts comprising the fund's eligible investment authority have been collected, which is known as the fund's **closing date**. After the holding period, DEV must issue tax credit certificates to the insurance company on the fourth, fifth, sixth, and seventh anniversaries of the closing date. The credit is nonrefundable but, if it is not fully claimed in one year, the excess may be carried forward for up to four years.

Credit cap

Current law allows DEV to certify up to a total of \$90 million in credit eligible contributions over the lifetime of the rural business growth program – \$45 million to program one funds and \$45 million to program two funds. The bill authorizes an additional \$90 million in credits for program three funds.²

Accepting applications

To receive a rural business growth fund certification, a fund must apply to DEV with a business plan to invest in rural businesses. It must also show that it has invested more than \$100 million in qualifying operating companies, including at least \$50 million in such companies located in rural areas.

Under current law, an **operating company** includes any company with principal operations in this state that has fewer than 250 employees and not more than \$15 million in

¹ R.C. 122.15(M).

² R.C. 122.151.

net income for the preceding year. The bill increases this employee threshold, such that a business may qualify as long as it employs fewer than 299 employees.

The bill also specifies that any applications for certification approved after the bill's 90-day effective date will be program three funds.³

Rural business concerns

Funds must invest in businesses with substantial operations in rural areas, which the law refers to as rural business concerns. A **rural business concern** is an operating company that has its principal operations in a rural area of Ohio (i.e., a county having a population less than 200,000). As discussed above, previously a rural business concern could not employ more than 250 employees, but the bill increases that threshold to 299 employees.

In general, a business has its "principal operations" in Ohio if at least 80% of its employees are Ohio residents or at least 80% of its payroll goes to Ohio residents. Alternatively, in the case of program two funds, a business headquartered in a county that borders another state can qualify if at least 65% of its employees are Ohio residents or at least 65% of its payroll goes to Ohio residents. The bill extends this special provision for border county businesses to program three funds.⁴

Investment requirements

Timing and duration of investments

Tax credits awarded to the investors of a rural business growth fund are contingent upon the fund making and maintaining a series of loans to or investments in rural business concerns. Under the bill, a program three fund must invest 25% of its eligible investment authority within one year of the closing date, 50% within two years of the closing date, and 100% within three years of the closing date. The same requirement applies to program two funds. By contrast, a program one fund must invest at least 50% of its eligible investment authority within one year of the closing date, and 100% within two years of the closing date.

All funds must maintain their investments until the sixth anniversary of the closing date. Under continuing law, if a loan or investment is sold or repaid, it is considered to be "maintained" so long as the fund reinvests or re-loans the returned capital, minus any profits, within one year.⁵

Investment uses

Under continuing law, a fund's investment in a rural business concern may include a capital or equity investment or a loan with stated maturity of at least one year. The bill specifies

³ R.C. 122.15(H) and (M).

⁴ R.C. 122.15(J).

⁵ R.C. 122.153(A)(3) and 122.154.

that a rural business concern cannot use a fund's investment to refinance or buy out a previous credit-eligible investment.⁶

Geographic location of rural business concerns

Continuing law requires rural business growth funds to invest a certain proportion of their investment authority in rural business concerns located in specific geographic areas. The following table outlines the existing requirements for program one and program two funds, and the bill's modified requirements for program three funds:

Investment location requirements		
Program one funds	Program two funds	Program three funds
No requirements.	<p>25% of eligible investment authority must be invested in rural business concerns having their principal business operations in a tier three rural area – a county with a population no greater than 75,000.</p> <p>75% of eligible investment authority must be invested in rural business concerns having their principal business operations in tier two or tier three rural areas – counties with a population no greater than 150,000.</p>	<p>50% of eligible investment authority must be invested in rural business concerns that have their principal business operations in a tier four rural area – any county in the Appalachian region, regardless of population.⁷</p> <p>75% of eligible investment authority must be invested in rural business concerns having their principal business operations in tier two, three, or four rural areas.</p>

Under the bill, investments in rural business concerns having their principal business operations in **tier one rural areas** – counties with a population greater than 150,000, but no greater than 200,000 – do not count towards the investment requirements associated with the tax credit to the extent those investments exceed 25% of the fund's eligible investment authority. If a program three fund fails to meet and maintain the investment thresholds prescribed by the act, the credits awarded to the fund's investors are subject to recapture. A

⁶ R.C. 122.15(G).

⁷ Eligible counties include: Adams, Ashtabula, Athens, Belmont, Brown, Carroll, Clermont, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Trumbull, Tuscarawas, Vinton, and Washington Counties. R.C. 107.21.

similar requirement applies to program two funds under continuing law, but does not apply to program one funds.⁸

Limit for investments in one business

Continuing law limits the extent to which an investment in a single rural business concern (or its affiliates) may count towards the fund's compliance with the credit's investment requirements. For program one funds, the amount by which the fund's investments in the same rural business concern exceed 20% of the fund's eligible investment authority is not counted for the purposes of the investment requirements. For program two funds, the limit is \$5 million invested in a single rural business concern.

The bill retains these standards for program one and program two funds, but increases the limit for program three funds to \$7.5 million.⁹

Decertification

A rural business growth fund may apply for decertification on or after the sixth anniversary of the fund's closing date. The law's investment limitations no longer apply to a fund after the date it is decertified. A fund can decertify by applying to DEV.

After decertification is complete, the fund might be required to pay the state a **state reimbursement amount**, which measures the extent to which the fund's investments failed to result in the employment of new full-time equivalent employees who are paid above a specific threshold. Continuing law does not directly require payment of the state reimbursement amount, but prohibits the fund from making further distributions to its equity holders without having paid the amount.

The bill modifies this reimbursement scheme for program three funds. In the case of program one and program two funds, the reimbursement amount is the amount by which the fund's investments exceed the number of new full-time equivalent employees multiplied by \$30,000. Under the bill, the reimbursement amount for program three funds will be the amount by which the fund's investments exceed the number of such employees multiplied by either \$30,000, for investments in tier one or tier two rural areas, or \$60,000, for investments in tier three or four rural areas.

Under continuing law, DEV may waive all or a portion of the state reimbursement amount if the Director determines that the fund's growth investments resulted in the retention of employment positions that otherwise would have been eliminated. The amount waived may not exceed the payroll of retained employment positions if each such position was paid an average of \$30,000 per year for the period of the investment. The bill retains this \$30,000 per year threshold for retained employees for program three funds.¹⁰

⁸ R.C. 122.15(U) and 122.153(A)(3).

⁹ R.C. 122.153(C).

¹⁰ R.C. 122.155.

HISTORY

Action	Date
Introduced	05-22-24
