

As Introduced

**131st General Assembly
Regular Session
2015-2016**

S. B. No. 209

**Senator Hite
Cosponsors: Senators Lehner, Eklund, Beagle, Yuko**

A BILL

To amend sections 5725.98 and 5729.98 and to enact
sections 122.15, 122.151, 122.152, 122.153, and
122.154 of the Revised Code to enact the "Ohio
Rural Jobs Act" which authorizes a nonrefundable
tax credit for insurance companies that invest
in rural business growth funds, which are
certified to provide capital to rural and
agricultural businesses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5725.98 and 5729.98 be amended
and sections 122.15, 122.151, 122.152, 122.153, and 122.154 of
the Revised Code be enacted to read as follows:

Sec. 122.15. As used in this section and sections 122.151
to 122.154 of the Revised Code:

(A) "Affiliate" means a person that directly, or
indirectly through one or more intermediaries, controls, is
controlled by, or is under common control with a person
certified or seeking certification as a rural business growth
fund. For the purposes of this division, a person is "controlled

by" another person if the controlling person holds, directly or 19
indirectly, the majority voting or ownership interest in the 20
controlled person or has control over the day-to-day operations 21
of the controlled person by contract or by law. 22

(B) "Closing date" means the date on which a rural 23
business growth fund has collected all of the amounts specified 24
by divisions (G) (1) and (2) of section 122.151 of the Revised 25
Code. 26

(C) "Credit-eligible capital contribution" means an 27
investment of cash by a person in a rural business growth fund 28
that equals the amount specified on a tax credit certificate 29
issued by the development services agency under division (F) (2) 30
of section 122.151 of the Revised Code. The investment shall 31
purchase an equity interest in the rural business growth fund or 32
purchase, at par value or premium, a debt instrument issued by 33
the rural growth fund that meets all of the following criteria: 34

(1) The debt instrument has an original maturity date of 35
at least five years after the date of issuance. 36

(2) The debt instrument has a repayment schedule that is 37
not faster than a level principal amortization over five years. 38

(3) The debt instrument has no interest, distribution, or 39
payment features dependent on the rural business growth fund's 40
profitability or the success of the rural growth investments. 41

(D) "Eligible distribution" means any of the following: 42

(1) A distribution of cash to one or more equity owners of 43
the rural business growth fund to fully or partially offset a 44
projected increase in the owner's federal or state tax 45
liability, including any penalties and interest, related to the 46
owner's ownership, management, or operation of the rural 47

business growth fund; 48

(2) A distribution of cash as payment of interest and 49
principal on a debt of the rural business growth fund except to 50
the extent the payment results in the rural business growth fund 51
having less than one hundred per cent of its eligible investment 52
authority invested in rural growth investments in this state or 53
held in cash and other marketable securities awaiting investment 54
in rural growth investments in this state; 55

(3) A distribution of cash related to the reasonable costs 56
and expenses of forming, syndicating, managing, and operating 57
the rural business growth fund. Such distributions may include 58
reasonable and necessary fees paid for professional services, 59
including legal and accounting service, related to the formation 60
and operation of the rural business growth fund and an annual 61
management fee to the extent it does not exceed two per cent of 62
the rural business growth fund's eligible investment authority. 63
"Eligible distribution" does not include such a distribution to 64
a person that made a credit-eligible capital contribution to the 65
rural business growth fund. 66

(E) "Eligible investment authority" means the amount 67
stated on the notice issued under division (F)(1) of section 68
122.151 of the Revised Code certifying the rural business growth 69
fund. Sixty per cent of a rural business growth fund's eligible 70
investment authority shall be comprised of credit-eligible 71
capital contributions. 72

(F) "Operating company" means any business that is none of 73
the following: 74

(1) A country club; 75

(2) A racetrack or other facility used for gambling; 76

<u>(3) A store the principal purpose of which is the sale of alcoholic beverages for consumption off premises;</u>	77 78
<u>(4) A massage parlor;</u>	79
<u>(5) A hot tub facility;</u>	80
<u>(6) A suntan facility;</u>	81
<u>(7) A business engaged in the development or holding of intangibles for sale;</u>	82 83
<u>(8) A private or commercial golf course;</u>	84
<u>(9) A farming operation;</u>	85
<u>(10) A business that derives or projects to derive fifteen per cent or more of annual revenue from the rental or sale of real property, except any business that is a special purpose entity principally owned by a principal user of that property formed solely for the purpose of renting, either directly or indirectly, or selling real property back to such principal user if such principal user does not derive fifteen per cent or more of its gross annual revenue from the rental or sale of real property;</u>	86 87 88 89 90 91 92 93 94
<u>(11) A publicly traded business.</u>	95
<u>(G) A business's "principal business operations" are in this state if at least eighty per cent of the business's employees reside in this state, the individuals who receive eighty per cent of the business's payroll reside in this state, or the business has agreed to use the proceeds of a rural growth investment to relocate at least eighty per cent of its employees to this state or pay at least eighty per cent of its payroll to individuals residing in this state.</u>	96 97 98 99 100 101 102 103

(H) "Rural area" means either of the following: 104

(1) Any area located within a political subdivision having 105
a population less than or equal to fifty thousand and outside 106
the standard metropolitan statistical area of any adjacent 107
community having a population greater than fifty thousand; 108

(2) Any area determined to be "rural in character" by the 109
under secretary of agriculture for rural development within the 110
United States department of agriculture. 111

(I) "Rural business concern" means an operating company 112
that, at the time of the initial investment in the company by a 113
rural business growth fund, has its principal business 114
operations in this state, has fewer than two hundred fifty 115
employees or not more than fifteen million dollars in net income 116
for the preceding taxable year, and meets either of the 117
following criteria: 118

(1) The business's principal business operations are 119
located in a rural area. 120

(2) The business produces or provides any goods or 121
services normally used by farmers, ranchers, or producers and 122
harvesters of aquatic products in their business operations, or 123
to improve the welfare or livelihood of such persons or is 124
involved in the processing and marketing of agricultural 125
products, farm supply, and input suppliers. 126

For the purposes of this division, "net income" means 127
federal gross income as required to be reported under the 128
Internal Revenue Code less federal and state taxes imposed on or 129
measured by income. 130

(J) "Rural business growth fund" means an entity certified 131
by the development services agency under section 122.151 of the 132

Revised Code. 133

(K) "Rural growth investment" means any capital or equity 134
investment in a rural business concern or any loan to a rural 135
business concern with a term of at least one year. 136

(L) "Taxable year" when used in reference to an insurance 137
company means the calendar year ending on the thirty-first day 138
of December next preceding the day the annual statement is 139
required to be returned under section 5725.18 or 5729.02 of the 140
Revised Code. 141

Sec. 122.151. (A) On and after October 1, 2015, a person 142
that has developed a business plan to invest in rural business 143
concerns in this state and has successfully solicited private 144
investors to make capital contributions in support of the plan 145
may apply to the development services agency for certification 146
as a rural business growth fund. The application shall include 147
all of the following: 148

(1) The total eligible investment authority sought by the 149
applicant under the business plan; 150

(2) Documents and other evidence sufficient to prove, to 151
the satisfaction of the agency, that the applicant meets all of 152
the following criteria: 153

(a) The applicant or an affiliate of the applicant is 154
licensed as a rural business investment company under 7 U.S.C. 155
2009cc, or as a small business investment company under 15 156
U.S.C. 681. 157

(b) As of the date the application is submitted, the 158
applicant has invested more than one hundred million dollars in 159
operating companies, including at least fifty million dollars in 160
operating companies located in rural areas. In computing 161

investments under this division, the applicant may include 162
investments made by affiliates of the applicant. 163

(3) The industries in which the applicant proposes to make 164
rural growth investments and the percentage of the rural growth 165
investments that will be made in each industry. The applicant 166
shall identify each industry by using the codes utilized by the 167
north American industry classification system. 168

(4) An estimate of the number of jobs that will be created 169
or retained in this state as a result of the applicant's rural 170
growth investments; 171

(5) A revenue impact assessment for the applicant's 172
proposed rural growth investments prepared by a nationally 173
recognized third-party independent economic forecasting firm 174
using a dynamic economic forecasting model. The revenue impact 175
assessment shall analyze the applicant's business plan over the 176
ten years following the date the application is submitted to the 177
agency. 178

(6) A signed affidavit from each investor successfully 179
solicited by the applicant to make a credit eligible capital 180
contribution in support of the business plan. Each affidavit 181
shall include information sufficient for the tax commissioner to 182
identify the investor and shall state the amount of the 183
investor's credit-eligible capital contribution. 184

(7) A nonrefundable application fee of five thousand 185
dollars. 186

(B) The development services agency shall review and make 187
a determination with respect to each application submitted under 188
division (A) of this section within thirty days of receipt. The 189
agency shall review and make determinations on the applications 190

in the order in which the applications are received by the 191
agency. Applications received by the agency on the same day 192
shall be deemed to have been received simultaneously. Except as 193
provided in division (C) of section 122.154 of the Revised Code, 194
the agency shall approve not more than seventy-five million 195
dollars in eligible investment authority and not more than 196
forty-five million dollars in credit-eligible capital 197
contributions under this section. 198

(C) The agency shall deny an application submitted under 199
this section if any of the following are true: 200

(1) The application is incomplete. 201

(2) The application fee is not paid in full. 202

(3) The applicant does not satisfy all the criteria 203
described in division (A) (2) of this section. 204

(4) The revenue impact assessment submitted under division 205
(A) (5) of this section does not demonstrate that the applicant's 206
business plan will result in a positive economic impact on this 207
state over a ten-year period that exceeds the cumulative amount 208
of tax credits that would be issued under section 122.152 of the 209
Revised Code if the application were approved. 210

(5) The credit-eligible capital contributions described in 211
affidavits submitted under division (A) (6) of this section do 212
not equal sixty per cent of the total amount of eligible 213
investment authority sought under the applicant's business plan. 214

(6) The agency has already approved the maximum amount of 215
eligible investment authority and credit-eligible capital 216
contributions allowed under division (B) of this section. 217

(D) If the agency denies an application under division (C) 218

of this section, the agency shall send notice of its 219
determination to the applicant. The notice shall include the 220
reasons that the application was denied. If the application was 221
denied for any reason other than the reason specified in 222
division (C) (6) of this section, the applicant may provide 223
additional information to the agency to complete, clarify, or 224
cure defects in the application. The additional information must 225
be submitted within fifteen days after the date the notice of 226
denial was dispatched by the agency. If the person or entity 227
submits additional information within fifteen days, the agency 228
shall reconsider the application within thirty days after 229
receiving the additional information. The application shall be 230
reviewed and considered before any pending application submitted 231
after the original submission date of the reconsidered 232
application. If the person or entity does not submit additional 233
information within fifteen days after dispatch of the notice of 234
denial, the applicant may submit a new application with a new 235
submission date at any time. 236

(E) If approving multiple simultaneously submitted 237
applications would result in exceeding the overall eligible 238
investment limit prescribed by division (B) of this section, the 239
development services agency shall proportionally reduce the 240
eligible investment authority and the credit-eligible capital 241
contributions for each approved application as necessary to 242
avoid exceeding the limit. 243

(F) The development services agency shall not deny a rural 244
business growth fund application or reduce the requested 245
eligible investment authority for reasons other than those 246
described in divisions (C) and (E) of this section. If the 247
agency approves such an application, the agency shall issue all 248
of the following notices: 249

(1) To the applicant, a written notice certifying that the 250
applicant qualifies as a rural business growth fund and 251
specifying the amount of the applicant's eligible investment 252
authority; 253

(2) To each investor whose affidavit was included in the 254
application, a tax credit certificate specifying the amount of 255
the investor's credit-eligible capital contribution; 256

(3) To the tax commissioner, a copy of each tax credit 257
certificate issued under division (F) (2) of this section. 258

(G) A rural business growth fund shall do all of the 259
following within sixty days of receiving the certification 260
issued under division (F) (1) of this section: 261

(1) Collect the credit-eligible capital contributions from 262
each investor issued a tax credit certificate under division (F) 263
(2) of this section; 264

(2) Collect one or more investments of cash that, when 265
added to the contributions collected under division (G) (1) of 266
this section, equal the fund's eligible investment authority. At 267
least ten per cent of the fund's eligible investment authority 268
shall be comprised of equity investments contributed by 269
affiliates of the rural business growth fund, including 270
employees, officers, and directors of such affiliates. 271

Within sixty-five days after receiving the certification 272
issued under division (F) (1) of this section, the rural business 273
growth fund shall send to the development services agency 274
documentation sufficient to prove that the amounts described in 275
divisions (G) (1) and (2) of this section have been collected. If 276
the rural business growth fund fails to fully comply with 277
division (G) of this section, the fund's certification shall 278

lapse. 279

Eligible investment authority and corresponding credit- 280
eligible capital contributions that lapse under this division do 281
not count toward limits on total eligible investment authority 282
and credit-eligible capital contributions prescribed by division 283
(B) of this section. Once eligible investment authority has 284
lapsed, the agency shall first award lapsed authority pro rata 285
to each rural business growth fund that was awarded less than 286
the requested eligible investment authority under division (E) 287
of this section. Any remaining eligible investment authority may 288
be awarded by the agency to new applicants. 289

(H) Application fees submitted to the agency pursuant to 290
division (A) (7) of this section shall be credited to the Ohio 291
rural jobs fund, which is hereby created, and used by the agency 292
to administer this section and sections 122.15 to 122.154 of the 293
Revised Code. 294

Sec. 122.152. (A) There is hereby allowed a nonrefundable 295
tax credit for taxpayers that made a credit-eligible capital 296
contribution to a rural business growth fund and were issued a 297
tax credit certificate under division (F) (2) of section 122.151 298
of the Revised Code. The credit may be claimed against the tax 299
imposed by section 5725.18, 5729.03, or 5729.06 of the Revised 300
Code. 301

(B) On the closing date, the taxpayer shall earn a vested 302
credit equal to the amount of the taxpayer's credit-eligible 303
capital contribution to the rural business growth fund, as 304
specified on the tax credit certificate. The taxpayer may claim 305
up to one-third of the credit authorized under this section for 306
each of the taxable years that includes the second, third, and 307
fourth anniversary dates of the closing date, exclusive of 308

amounts carried forward pursuant to division (C) of this 309
section. 310

(C) The credit shall be claimed in the order required 311
under section 5725.98 or 5729.98 of the Revised Code as 312
applicable. If the amount of the credit for a taxable year 313
exceeds the tax otherwise due for that year, the excess shall be 314
carried forward to ensuing taxable years until fully used. A 315
taxpayer claiming a credit under this section shall submit a 316
copy of the tax credit certificate with the taxpayer's return 317
for each taxable year for which the credit is claimed. 318

Sec. 122.153. (A) The development services agency shall 319
revoke a tax credit certificate issued under section 122.151 of 320
the Revised Code if any of the following occur with respect to a 321
rural business growth fund before the fund is decertified under 322
division (C) of this section: 323

(1) The rural business growth fund in which the credit- 324
eligible capital contribution was made does not invest one 325
hundred per cent of its eligible investment authority in rural 326
growth investments in this state within two years of the closing 327
date. 328

(2) The rural business growth fund, after investing one 329
hundred per cent of its eligible investment authority in rural 330
growth investments in this state, fails to maintain that 331
investment until the fifth anniversary of the closing date. For 332
the purposes of this division, an investment is "maintained" 333
even if the investment is sold or repaid so long as the rural 334
business growth fund reinvests an amount equal to the capital 335
returned or recovered by the fund from the original investment, 336
exclusive of any profits realized, in other rural growth 337
investments in this state within twelve months of the receipt of 338

such capital. Amounts received periodically by a rural business 339
growth fund shall be treated as continually invested in rural 340
growth investments if the amounts are reinvested in one or more 341
rural growth investments by the end of the following calendar 342
year. A rural business growth fund is not required to reinvest 343
capital returned from rural growth investments after the fourth 344
anniversary of the closing date, and such rural growth 345
investments shall be considered held continuously by the rural 346
growth fund through the fifth anniversary of the closing date. 347

(3) The rural business growth fund makes a distribution or 348
payment other than an eligible distribution before the fifth 349
anniversary of the closing date. 350

(4) The rural business growth fund invests more than 351
twenty per cent of its eligible investment authority in the same 352
rural business concern, including amounts invested in affiliates 353
of the rural business concern. 354

(5) The rural business growth fund makes a rural growth 355
investment in a rural business concern that directly or 356
indirectly through an affiliate owns, has the right to acquire 357
an ownership interest, makes a loan to, or makes an investment 358
in the rural business growth fund, an affiliate of the rural 359
business growth fund, or an investor in the rural business 360
growth fund. Division (A) (5) of this section does not apply to 361
investments in publicly traded securities by a rural business 362
concern or an owner or affiliate of such concern. 363

Before revoking one or more tax credit certificates under 364
this division, the agency shall notify the rural business growth 365
fund of the reasons for the pending revocation. If the rural 366
business growth fund corrects the violations outlined in the 367
notice to the satisfaction of the agency within one hundred 368

eighty days of the date the notice was dispatched, the agency shall not revoke the tax credit certificates. 369
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(B) (1) If the development services agency revokes a tax credit certificate under division (A) of this section, the agency shall notify the tax commissioner and the superintendent of insurance of the revocation. The superintendent shall make an assessment under Chapter 5725. or 5729. of the Revised Code for the amount of the credit claimed by the certificate holder before the certificate was revoked. The time limitations on assessments under those chapters do not apply to an assessment under this division, but the superintendent shall make the assessment within one year after the date the agency notifies the superintendent that the certificate has been revoked. 371
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(2) If tax credit certificates are revoked under this section, the associated eligible investment authority and credit-eligible capital contributions do not count toward the limit on total eligible investment authority and credit-eligible capital contributions described by division (B) of section 122.151 of the Revised Code. The agency shall first award reverted authority pro rata to each rural business growth fund that was awarded less than the requested eligible investment authority under division (E) of section 122.151 of the Revised Code. Any remaining eligible investment authority may be awarded by the agency to new applicants. 382
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(C) (1) On or after the fifth anniversary of the closing date, a rural business growth fund that has not committed any of the acts described in division (A) of this section may apply to the development services agency to decertify as a rural business growth fund. The agency shall respond to the application within thirty days after receiving the application. In evaluating the 393
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application, the fact that no tax credit certificates have been 399
revoked with respect to the rural business growth fund shall be 400
sufficient evidence to prove that the fund is eligible for 401
decertification. The agency shall not unreasonably deny an 402
application submitted under this division. 403

(2) The agency shall send notice of its determination with 404
respect to an application submitted under division (C) (1) of 405
this section to the rural business growth fund. If the 406
application is denied, the notice shall include the reasons for 407
the determination. 408

(3) The agency shall not revoke a tax credit certificate 409
due to any actions of a rural business growth fund that occur 410
after the date the fund's application for decertification is 411
approved under division (C) of this section. This division does 412
not prohibit the agency from revoking a tax credit certificate 413
due to the actions of a rural business growth fund that occur 414
before the date the fund's application for decertification is 415
approved, even if those actions are discovered after that date. 416

Sec. 122.154. (A) Each rural business growth fund shall 417
submit a report to the development services agency on or before 418
the fifth business day after the second anniversary of the 419
closing date. The report shall provide documentation as to the 420
investment of the fund's eligible investment authority in rural 421
growth investments. Such documentation shall include the 422
following: 423

(1) A bank statement of the rural business growth fund 424
displaying each rural growth investment; 425

(2) The name and location of each business in which the 426
rural business growth fund has made a rural growth investment, 427

including evidence that the business qualified as a rural 428
business concern at the time the investment was made. 429

(B) On or before the last day of February of each year 430
following the year in which the report required under division 431
(A) of this section is due, the rural business growth fund shall 432
submit an annual report to the development services agency 433
including the following: 434

(1) The number of employment positions created or retained 435
as a result of the fund's rural growth investments as of the 436
last day of the preceding calendar year; 437

(2) The average annual salary of the positions described 438
in division (B) (1) of this section; 439

(3) Any other information required by the agency. 440

(C) The director of development services, after 441
consultation with the tax commissioner and the superintendent of 442
insurance and in accordance with Chapter 119. of the Revised 443
Code, shall adopt rules necessary to implement sections 122.15 444
to 122.154 of the Revised Code. 445

Sec. 5725.98. (A) To provide a uniform procedure for 446
calculating the amount of tax imposed by section 5725.18 of the 447
Revised Code that is due under this chapter, a taxpayer shall 448
claim any credits and offsets against tax liability to which it 449
is entitled in the following order: 450

(1) The credit for an insurance company or insurance 451
company group under section 5729.031 of the Revised Code; 452

(2) The credit for eligible employee training costs under 453
section 5725.31 of the Revised Code; 454

(3) The credit for purchasers of qualified low-income 455

community investments under section 5725.33 of the Revised Code;	456
(4) The nonrefundable job retention credit under division (B) (1) of section 122.171 of the Revised Code;	457 458
(5) <u>The nonrefundable credit for investments in rural business growth funds under section 122.152 of the Revised Code;</u>	459 460
<u>(6)</u> The offset of assessments by the Ohio life and health insurance guaranty association permitted by section 3956.20 of the Revised Code;	461 462 463
(6) <u>(7)</u> The refundable credit for rehabilitating a historic building under section 5725.34 of the Revised Code.	464 465
(7) <u>(8)</u> The refundable credit for Ohio job retention under division (B) (2) or (3) of section 122.171 of the Revised Code;	466 467
(8) <u>(9)</u> The refundable credit for Ohio job creation under section 5725.32 of the Revised Code;	468 469
(9) <u>(10)</u> The refundable credit under section 5725.19 of the Revised Code for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code.	470 471 472 473
(B) For any credit except the refundable credits enumerated in this section, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.	474 475 476 477 478 479 480 481 482
Sec. 5729.98. (A) To provide a uniform procedure for	483

calculating the amount of tax due under this chapter, a taxpayer	484
shall claim any credits and offsets against tax liability to	485
which it is entitled in the following order:	486
(1) The credit for an insurance company or insurance	487
company group under section 5729.031 of the Revised Code;	488
(2) The credit for eligible employee training costs under	489
section 5729.07 of the Revised Code;	490
(3) The credit for purchases of qualified low-income	491
community investments under section 5729.16 of the Revised Code;	492
(4) The nonrefundable job retention credit under division	493
(B) (1) of section 122.171 of the Revised Code;	494
(5) <u>The nonrefundable credit for investments in rural</u>	495
<u>business growth funds under section 122.152 of the Revised Code;</u>	496
<u>(6) The offset of assessments by the Ohio life and health</u>	497
<u>insurance guaranty association against tax liability permitted</u>	498
<u>by section 3956.20 of the Revised Code;</u>	499
(6) <u>(7) The refundable credit for rehabilitating a</u>	500
historic building under section 5729.17 of the Revised Code.	501
(7) <u>(8) The refundable credit for Ohio job retention under</u>	502
division (B) (2) or (3) of section 122.171 of the Revised Code;	503
(8) <u>(9) The refundable credit for Ohio job creation under</u>	504
section 5729.032 of the Revised Code;	505
(9) <u>(10) The refundable credit under section 5729.08 of</u>	506
the Revised Code for losses on loans made under the Ohio venture	507
capital program under sections 150.01 to 150.10 of the Revised	508
Code.	509
(B) For any credit except the refundable credits	510

enumerated in this section, the amount of the credit for a 511
taxable year shall not exceed the tax due after allowing for any 512
other credit that precedes it in the order required under this 513
section. Any excess amount of a particular credit may be carried 514
forward if authorized under the section creating that credit. 515
Nothing in this chapter shall be construed to allow a taxpayer 516
to claim, directly or indirectly, a credit more than once for a 517
taxable year. 518

Section 2. That existing sections 5725.98 and 5729.98 of 519
the Revised Code are hereby repealed. 520