

## **Ohio Rural Business Growth Program Statutory Language – Effective March 23, 2018**

**Sec. 122.15** . As used in this section and sections 122.151 to 122.156 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 another person. For the purposes of this division, a person is "controlled by" another person 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.

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

(C) "Credit-eligible capital contribution" means an investment of cash by a person subject to the tax imposed by section 3901.86, 5725.18, 5729.03, or 5729.06 of the Revised Code in a rural business growth fund that equals the amount specified on a notice of tax credit allocation issued by the development services agency under division (I)(1) of section 122.151 of the Revised Code. The investment shall purchase an equity interest in the fund or purchase, at par value or premium, a debt instrument issued by the fund that meets all of the following criteria:

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

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

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

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

(E) "Full-time equivalent employee" means the quotient obtained by dividing the total number of hours for which employees were compensated for employment over the preceding twelvemonth period by two thousand eighty.

(F) "Growth investment" means any capital or equity investment in a rural business concern or any loan to a rural business concern with a stated maturity of at least one year. A secured loan or the provision of a revolving line of credit to a rural business concern is a growth investment only if the rural business growth fund obtains an affidavit from the president or chief executive officer of the rural business concern attesting that the rural business concern sought and was denied similar financing from a commercial bank.

(G) "Operating company" means any business that has its principal business operations in this state, has fewer than two hundred fifty employees and not more than fifteen million dollars in net income for the preceding taxable year, and that is none of the following:

(1) A country club;

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

(3) A store the principal purpose of which is the sale of alcoholic beverages for consumption off premises;

(4) A massage parlor;

(5) A hot tub facility;

(6) A suntan facility;

(7) A business engaged in the development or holding of intangibles for sale;

(8) A private or commercial golf course;

(9) A business that derives or projects to derive fifteen per cent or more of its net income

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;

(10) A publicly traded business.

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

(H) 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 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.

(I) "Rural area" means any county in this state having a population less than two hundred thousand as of the most recent decennial census or the most recent annual population estimate published or released by the United States census bureau.

(J) "Rural business concern" means an operating company that has its principal business operations located in a rural area.

(K) "Rural business growth fund" and "fund" mean an entity certified by the development services agency under section 122.151 of the Revised Code.

(L) "Taxable year" means the calendar year ending on the thirty-first day of December next preceding the day the annual statement is required to be returned under section 5725.18 or 5729.02 of the Revised Code.

**Sec. 122.151 .** (A) On and after the effective date of the enactment of this section, a person that has developed a business plan to invest in rural business concerns in this state and has successfully solicited private investors to make credit-eligible capital contributions in support of the plan may apply to the development services agency for certification as a rural business growth fund. The application shall include all of the following:

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

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

(a) The applicant or an affiliate of the applicant is licensed 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.

(b) As of the date the application is submitted, the applicant has invested more than one hundred million dollars in operating companies, including at least fifty million dollars in operating companies located in rural areas. In computing investments under this division, the applicant may include investments made by affiliates of the applicant and investments made in businesses that are not operating companies but would qualify as operating companies if the principal business operations were located in this state.

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

(4) An estimate of the number of new full-time equivalent employees and retained full-time equivalent employees that will result from the applicant's growth investments;

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

(6) A signed affidavit from each investor successfully solicited by the applicant to make a credit eligible capital contribution in support of the business plan. Each affidavit shall include information sufficient for the agency and the superintendent of insurance to identify the investor and shall state the amount of the investor's credit-eligible capital contribution.

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

(B)(1) Except as provided in division (B)(2) of this section, the agency shall review and make a determination with respect to each application submitted under division (A) of this section within sixty days of receipt. The agency shall review and make determinations on the applications in the order in which the applications are received by the agency. Applications received by the agency on the same day shall be deemed to have been received simultaneously. The agency shall approve not more than seventy-five million dollars in eligible investment authority and not more than forty-five million dollars in credit-eligible capital contributions under this section.

(2) If the agency denies an application for certification as a fund, and approving a subsequently submitted application would result in exceeding the dollar limitation on eligible investment authority or credit-eligible contributions prescribed by division (B)(1) of this section assuming the previously denied application were completed, clarified, or cured under division (D) of this section, the agency shall refrain from making a determination on the subsequently submitted application until the previously denied application is reconsidered or the fifteen-day period for submitting additional information respecting that application has passed, whichever comes first.

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

(1) The application is incomplete.

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

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

(4) The revenue impact assessment submitted under division (A)(5) of this section 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 under section 122.152 of the Revised Code if the application were approved.

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

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

(D) If the agency denies an application under division (C) of this section, the agency shall send notice of its determination to the applicant. The notice shall include the reason or reasons that the application was denied. If the application was denied for any reason other than the reason specified in division (C)(6) of this section, the applicant may provide additional information to the agency to complete, clarify, or cure defects in the application. The additional information must be submitted within fifteen days after the date the notice of denial was dispatched by the agency. If the person submits additional information within fifteen days, the agency shall reconsider the application within thirty days after receiving the additional information. The application shall be reviewed and considered before any pending application submitted after the original submission date of the reconsidered application. If the person does not submit additional information within fifteen days after dispatch of the notice of denial, the person may submit a new application with a new submission date at any time.

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

(F) The agency shall not deny a rural business growth fund application or reduce the requested eligible investment authority for reasons other than those described in divisions (C) and (E) of this section. If the agency approves such an application, the agency shall issue a written notice to the applicant certifying that the applicant qualifies as a rural business growth fund and specifying the amount of the applicant's eligible investment authority.

(G) A fund shall do all of the following within sixty days after receiving the certification issued under division (F) of this section:

(1) Collect the credit-eligible capital contributions from each investor whose affidavit was included in the application. If the rural business growth fund's requested eligible investment authority is proportionally reduced under division (E) of this section, the investor's required credit-eligible capital contribution shall be reduced by the same proportion.

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

(H) Within sixty-five days after receiving the certification issued under division (F)(1) of this section, the fund shall send to the agency documentation sufficient to prove that the amounts described in divisions (G)(1) and (2) of this section have been collected. The fund shall identify any affiliate of an investor described in division (G)(1) of this section that will seek to claim the credit allowed by section 122.152 of the Revised Code. If the fund fails to fully comply with division (G) of this section, the fund's certification shall lapse.

Eligible investment authority and corresponding credit-eligible capital contributions that lapse under this division do not count toward limits on total eligible investment authority and credit eligible

capital contributions prescribed by division (B) of this section. Once eligible investment authority has lapsed, the agency shall first award lapsed authority pro rata to each fund that was awarded less than the requested eligible investment authority because of the operation of division (E) of this section. Any remaining eligible investment authority may be awarded by the agency to new applicants.

(I) After receiving documentation sufficient to prove that the amounts described in divisions (G)(1) and (2) of this section have been collected, the agency shall issue the following notices:

(1) To each investor or affiliate identified in division (H) of this section, a notice of the amount and utilization schedule of the tax credits allocated to that investor or affiliate as a result of its credit-eligible capital contribution;

(2) To the superintendent of insurance, a notice of the amount and utilization schedule of the tax credits allocated to each investor described in division (G)(1) of this section and any affiliate of such investor who will seek to claim the credit allowed by section 122.152 of the Revised Code.

(J) Application fees submitted to the agency pursuant to division (A)(7) of this section shall be credited to the tax incentives operating fund created under section 122.174 of the Revised Code, and shall be used by the agency to administer sections 122.15 to 122.156 of the Revised Code.

**Sec. 122.152 .** (A) There is hereby allowed a nonrefundable tax credit for owners of tax credit certificates issued by the development services agency under division (B) of this section. The credit may be claimed against the tax imposed by section 3901.86, 5725.18, 5729.03, or 5729.06 of the Revised Code.

(B) On the closing date, a taxpayer that made a credit-eligible capital contribution to a rural business growth fund shall be eligible for a credit equal to the amount specified in the notice issued under division (I)(1) of section 122.151 of the Revised Code. On or before the third, fourth, fifth, and sixth anniversary dates of the closing date, the agency shall issue a tax credit certificate to the

taxpayer specifying the corresponding anniversary date and a credit amount equal to one-fourth of superintendent shall make the assessment within one year after the date the agency notifies the the total credit authorized under this section. The taxpayer or its identified affiliate may claim the credit amount for the taxable year that includes the date specified on the certificate. The taxpayer making a credit-eligible capital contribution and the issuance of a tax credit certificate by the agency does not represent a verification or certification by the agency of compliance with the recapture provisions of section 122.153 of the Revised Code. The tax credit issued under this division is subject to recapture under section 122.153 of the Revised Code.

(C) The credit shall be claimed in the order required under section 5725.98 or 5729.98 of the Revised Code as applicable. If the amount of the credit for a taxable year exceeds the tax otherwise due for that year, the excess may be carried forward for not more than four ensuing taxable years. A taxpayer claiming a credit under this section shall submit a copy of the tax credit certificate with the taxpayer's annual statement for each taxable year in which the credit is claimed.

**Sec. 122.153 .** (A) The development services agency shall not be required to issue a tax credit certificate under section 122.152 of the Revised Code if the fund in which the credit-eligible capital contribution was made does not invest fifty per cent of its eligible investment authority in growth investments within one year of the closing date and one hundred per cent of its eligible investment authority in growth investments in this state within two years of the closing date.

(B) The agency shall recapture tax credits claimed under section 122.152 of the Revised Code if any of the following occur with respect to the rural business growth fund:

(1) The fund, after investing one hundred per cent of its eligible investment authority in growth investments in this state, fails to maintain that investment until the sixth anniversary of the closing date. For the purposes of this division, 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 growth investments in this state within one year of the receipt of such capital.

(2) The fund makes a distribution or payment after the fund complies with division (G) of section 122.151 of the Revised Code and before the fund decertifies under division (D) of this section that results in the fund having less than one hundred per cent of its eligible investment authority invested in growth investments in this state.

(3) The fund makes a growth investment in a rural 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 fund, an affiliate of the fund, or an investor in the fund. Division (A)(3) of this section does not apply to investments in publicly traded securities by a rural business concern or an owner or affiliate of a rural business concern.

Before recapturing one or more tax credits under this division, the agency shall notify the fund of the reasons for the pending recapture. If the fund corrects the violations outlined in the notice to the satisfaction of the agency within thirty days of the date the notice was dispatched, the agency shall not recapture the tax credits.

(C) The amount by which one or more growth investments by a fund in the same rural business concern exceeds twenty per cent of the fund's eligible investment authority shall not be counted as a growth investment for the purposes of this section. A growth investment in an affiliate of a rural business concern shall be treated as a growth investment in that rural business concern for the purposes of this division.

(D) If the agency recaptures a tax credit under this section, the agency shall notify the superintendent of insurance of the recapture. The superintendent shall make an assessment under Chapter 5725. or 5729. of the Revised Code for the amount of the credit claimed by each certificate owner associated with the fund before the recapture was finalized. The time limitations on

assessments under those chapters do not apply to an assessment under this division, but the superintendent of the recapture. Following the recapture of a tax credit under this section, no tax credit certificate associated with the fund may be utilized. Notwithstanding division (B) of section 122.152 of the Revised Code, if a tax credit is recaptured under this section the agency shall not issue future tax credit certificates to taxpayers that made credit-eligible capital contributions to the fund.

(E)(1) On or after the sixth anniversary of the closing date, a fund that has not committed any of the acts described in division (B) of this section may apply to the agency to decertify as a rural business growth fund. The agency shall respond to the application within sixty days after receiving the application. In evaluating the application, the fact that no tax credit has been recaptured with respect to the fund shall be sufficient evidence to prove that the fund is eligible for decertification. The agency shall not unreasonably deny an application submitted under this division.

(2) The agency shall send notice of its determination with respect to an application submitted under division (E)(1) of this section to the fund. If the application is denied, the notice shall include the reason or reasons for the determination.

(3) The agency shall not recapture a tax credit due to any actions of a fund that occur after the date the fund's application for decertification is approved. Division (E)(3) of this section does not prohibit the agency from recapturing a tax credit due to the actions of a fund that occur before the date the fund's application for decertification is approved, even if those actions are discovered after that date.

**Sec. 122.154 .** (A) Each rural business growth fund shall submit a report to the development services agency on or before the first day of each March following the end of the calendar year that includes the closing date until the calendar year after the fund has decertified. The report shall provide an itemization of the fund's growth investments and shall include the following documents and information:

(1) A bank statement evidencing each growth investment;

(2) The name, location, and industry class of each business that received a growth investment from the fund and evidence that the business qualified as a rural business concern at the time the investment was made. If the fund obtained a written opinion from the agency on the business's status as a rural business concern under section 122.156 of the Revised Code, or if the fund makes a written request for such an opinion and the agency failed to respond within thirty days as required by that section, a copy of the agency's favorable opinion or a dated copy of the fund's unanswered request, as applicable, shall be sufficient evidence that the business qualified as a rural business concern at the time the investment was made.

(3) The number of employment positions that existed at each business described in division (A)(2) of this section on the date the business received the growth investment;

(4) The number of new full-time equivalent employees resulting from each of the fund's growth investments made or maintained in the preceding calendar year;

(5) Any other information required by the agency.

(B) Each fund shall submit a report to the agency on or before the fifth business day after the first and second anniversaries of the closing date that provides documentation sufficient to prove that the fund has met the investment thresholds described in division (A) of section 122.153 of the Revised Code and has not implicated any of the other recapture provisions described in division (B) of that section.

(C) Each certified rural business growth fund shall pay the agency an annual fee of twenty thousand dollars. The initial annual fee required of a fund shall be due and payable to the agency along with the submission of documentation required under division (H) of section 122.151 of the Revised Code. Each subsequent annual fee is due and payable on the last day of February following

the first and each ensuing anniversary of the closing date. If the fund is required to submit an annual services agency and (B) the programs described in those sections. report under division (A) of this section, the annual fee shall be submitted along with the report. No fund shall be required to pay an annual fee after the fund has decertified under section 122.153 of the Revised Code. Annual fees paid to the agency under this section shall be credited to the tax incentives operating fund created under section 122.174 of the Revised Code.

(D) The director of development services, after consultation with the superintendent of insurance and in accordance with Chapter 119. of the Revised Code, may adopt rules necessary to implement sections 122.15 to 122.156 of the Revised Code.

**Sec. 122.155 .** (A)(1) For each calendar year in which a rural business growth fund makes or maintains a growth investment in a rural business concern in this state, the fund shall determine the number of new full-time equivalent employees produced at the business concern as a result of the investment. New full-time equivalent employees shall be computed by subtracting the number of full-time equivalent employees at the rural business concern on the date of the fund's initial growth investment in the rural business concern from the number of full-time equivalent employees at the rural business concern on the last day of the calendar year. If the computation results in a number less than zero, the number of new full-time equivalent employees, produced by the fund's growth investment for that calendar year period shall be zero. Only employees with an hourly wage rate of at least one hundred fifty per cent of the federal minimum wage may be considered in computing the number of new full-time equivalent employees for the purposes of this section.

(2) A fund may determine and include, for the purposes of this section and section 122.154 of the Revised Code, the number of new full-time equivalent employees produced at a rural business concern after the year in which the fund's growth investment is repaid or redeemed. The new full-time equivalent employees shall be computed in the same manner as in division (A)(1) of this section based on reporting information provided by the rural business concern to the fund.

(B) After a fund's application for decertification is approved under section 122.153 of the Revised Code, the fund shall determine the state reimbursement amount. The state reimbursement amount shall equal the amount by which the fund's credit-eligible capital contributions exceed the product obtained by multiplying thirty thousand dollars by the aggregate number of new full-time equivalent employees for the fund. If that product is greater than the fund's credit-eligible capital contributions, the state reimbursement amount shall equal zero. In the absence of additional information provided by the fund or discovered by the agency, the number of new full-time equivalent employees for the purposes of this division equals the sum of all new full-time equivalent employees reported by the fund on the annual reports required under section 122.154 of the Revised Code.

(C) After the state reimbursement amount is computed under division (B) of this section, the fund shall not be permitted to make further distributions to equity holders of the fund, including investors that are equity holders of the funds without first remitting the state reimbursement amount to the agency. All amounts received by the agency under this division shall be credited to the general revenue fund.

(D) The director of development services, upon the request of a fund, may waive all or a portion of the remission required under division (C) of this section if the director determines, based on an affidavit of the chief executive officer or president of a rural business concern, that the growth investments of the fund resulted in the retention of employment positions that would have otherwise been eliminated at rural business concerns in this state. The amount waived shall not exceed the product of thirty thousand dollars multiplied by the number of retained employment positions multiplied by the number of years in which the fund made or maintained a growth investment in the rural business concern that retained the employment positions

**Section 122.156 .** A rural business growth fund, before investing in a business, may request a written opinion from the development services agency as to whether the business qualifies as a rural business concern based on the criteria prescribed by section 122.15 of the Revised Code. The request shall be submitted in a form prescribed by rule of the agency. The agency shall issue a written opinion to the fund within thirty business days of receiving such a request. Notwithstanding division (H) of section 122.15 of the Revised Code, if the agency determines that the business qualifies as a rural business concern or if the agency fails to timely issue the written opinion as required under this section, the business shall be considered a rural business concern for the purposes of sections 122.15 to 122.156 of the Revised Code.

**Sec. 122.174 .** There is hereby created in the state treasury the tax incentives operating fund. The fund shall consist of any amounts appropriated to it and money credited to the fund pursuant to section 122.151, 122.154, 122.17, 122.171, 122.175, 122.85, 122.86, 3735.672, 5709.68, or 5725.33 of the Revised Code. The director of development services shall use money in the fund to pay expenses related to the administration of (A) the business services division of the development services agency and (B) the programs described in those sections.