Bill Number:	S.0407 Introduced on February 14, 2017
Author:	Campbell
Subject:	S.C. Agribusiness and Rural Jobs Act
Requestor:	Senate Finance
RFA Analyst(s):	Martin, Stein, Wren
Impact Date:	May 16, 2017

Estimate of Fiscal Impact

	FY 2020-21	FY 2021-22
State Expenditure		
General Fund	$0	$0
Other and Federal	$0	$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	($1,500,000)	($1,500,000)
Other and Federal	$0	$0
Local Expenditure	$0	$0
Local Revenue	$0	$0

Fiscal Impact Summary
This bill would reduce General Fund corporation income tax revenue, insurance premium tax revenue, and/or corporation license fee revenue by an estimated $1,500,000 in FY2020-21, and each fiscal year thereafter. This bill would not affect Federal fund revenue, Other fund revenue, or local revenue.

Explanation of Fiscal Impact

Introduced on February 14, 2017
State Expenditure
The Department of Revenue indicates that there will be no expenditure impact to the General Fund, Federal Funds, or Other Funds from this bill. The Department can administer the legislative changes with existing resources.

State Revenue
In 2002, Congress created the Rural Business Investment Program to license new rural business investment companies (RBIC). The RBIC's were modeled after the Small Business Investment Company Program and the New Markets Venture Capital Program, but the RBIC's were designed to promote economic development and job creation in rural areas. The program is designed to encourage private risk-taking and investment in rural America. The program is basically a venture capital fund that provides financing to the rural areas in a state where access to capital is limited or nonexistent. The RBIC program was met with very limited success and Congress cut funding for the program in 2005 and repealed the authority to spend funds in the future. Congress essentially ended the funding authority for the program.

After passage of the 2014 Farm Bill, President Obama announced the "Made in Rural America" initiative to help rural businesses and communities take advantage of new investment opportunities and access additional markets at home and abroad. The initiative created a new $150 million investment fund that the United States Department of Agriculture (USDA) will use to help grow rural small business. Since then, the USDA has approved five Rural Business Investment Companies (RBIC's) as part of efforts to attract private sector capital to investment opportunities in rural America to help drive more economic growth in rural communities.

The Rural Business Investment Program is currently in many states and has experienced varying degrees of success. In fact, Colorado repealed its statute citing that it is not efficiently and effectively achieving the economic development purposes for which it was enacted. There are currently no approved RBIC's in South Carolina. The state does provide tax credits for venture capital investment and start-up companies, such as the seed capital credit and a tax credit for angel investors. These tax credits, however, do not focus primarily on investment opportunities in the rural areas of the State.

There are primarily two types of business investment companies – a rural business investment company and a small business investment company. A rural business investment company provides a RBIC license to newly formed venture capital organizations to help meet the equity capital investment needs in rural communities. Entities include for-profit entities or a for-profit subsidiary of an entity. It must raise a minimum of $10,000,000 in private equity capital. It may be structured as limited partnerships, limited liability companies, or corporations. A minimum of seventy-five percent of funds must be invested in rural areas with a population of 50,000 or less. A minimum of fifty percent of funds must be invested in smaller enterprises. A maximum of ten percent of RBIC investments may be made in urban areas.

A small business investment company (SBIC) is a multi-billion dollar program founded in 1958. The SBIC Program is one of many financial assistance programs available through the U.S. Small Business Administration. The structure of the program is unique in that SBIC's are privately owned and managed investment funds, licensed and regulated by SBA, that use their own capital plus funds borrowed with an SBA guarantee to make equity and debt investments in qualifying small businesses. The U.S. Small Business Administration does not invest directly into small business through the SBIC Program, but provides funding to qualified investment management firms with expertise in certain sectors or industries.

Section 1. This bill would add Section 12-69-100 to state that Chapter 69 of Title 12 may be referred to and cited as the "South Carolina Agribusiness and Rural Jobs Act".

This bill adds Section 12-69-110 to provide a series of definitions pertaining to the newly created chapter. The following is a selection of the most pertinent definitions in the bill presented in alphabetical order.

- A "credit-eligible capital contribution" is an investment of cash in an agribusiness and rural growth fund that equals the amount specified on a tax credit certificate issued by the

Department of Revenue. The investment must purchase an equity interest or a debt instrument in the fund that has a maturity date at least five years from the closing date.

- An “eligible business concern” is a business that has less than 250 employees and not more than $15,000,000 in net income for the preceding taxable year. The business must have its principal business operations in one or more rural areas of this State and is engaged in industries related to agribusiness. The Department of Agriculture would make the determination that the investment is highly beneficial to the economic growth of this State.

- “Investment authority” is the amount stated on the notice issued by the Department of Revenue 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, e.g., an investment of cash.

- The “principal place of business” is the place where at least sixty percent of employees work or where employees that are paid at least sixty percent of the payroll work.

- A “rural area” is a county in South Carolina that has a population of less than 75,000 according to the latest decennial census, or an area determined to be rural in character by the Undersecretary of Agriculture for Rural Development within the U.S. Department of Agriculture. A table is included at the end of the statement that shows which counties in South Carolina have a population of less than 75,000 persons.

This bill adds Section 12-69-120 to describe the process of submitting agribusiness and rural growth fund applications to the Department of Revenue. The application must include:

- The total investment authority sought and the total credit sought, which may not exceed sixty percent of the investment authority sought

- A copy 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

- Evidence that the applicant has invested at least $100,000,000 in nonpublic companies located in rural areas

- An estimate of the number of jobs that will be created or retained as a result of the investment

- A business plan that includes a projection of state and local tax revenue over a ten year period

- A signed affidavit from investors stating the amount of credit-eligible capital contribution taxpayers commit to make

- A nonrefundable application fee of $5,000

The Department of Revenue shall make its determination on the application within thirty days. The department may not approve more than $100,000,000 in investment authority and not more than $60,000,000 in credit-eligible capital contributions for all taxpayers in all years. If application requests exceed this limitation, the department shall reduce the investment authority and the credit-eligible capital contribution proportionally to avoid exceeding the limit.

If the department denies an application, the applicant has fifteen days to remedy any defects and resubmit the application for redetermination. The department has thirty to reconsider the amended application. Upon approval of the application, the department shall issue an approval letter to the agribusiness and rural growth fund indicating the amount of investment authority and a tax credit certificate to the investor specifying the amount of the investor's credit-eligible capital contribution.

After receiving the approval, the agribusiness and rural growth fund shall collect the capital-eligible capital contributions (the cash investment) from the taxpayer issued a tax credit certificate within sixty days. The agribusiness and rural growth fund shall send documentation to the Department of Revenue within sixty-five days after receiving approval to prove that the investment amounts have been collected.

This bill adds Section 12-69-130 to allow a taxpayer that was issued a tax credit certificate to claim a tax credit in an amount specified on the tax credit certificate issued by the Department of Revenue. The tax credit may be claimed against corporation income taxes, insurance premium taxes, and corporation license fees. The tax credit may not be sold, transferred, or allocated to any other entity except an affiliate subject to the corporation income tax and insurance premium taxes. The tax credit shall be claimed in four equal installments beginning in year three. If the amount of the tax credit exceeds the taxpayer's tax due in a taxable year, the excess tax credit may be carried forward for five years.

This bill adds Section 12-69-140 to allow the Department of Revenue to revoke a tax credit certificate of an agribusiness and rural growth fund if the agribusiness and rural growth fund:

- does not invest one hundred percent of its investment authority in eligible investments in South Carolina within two years of the closing date with at least twenty-five percent of its investment authority initially invested in an eligible business engaged in agribusiness as designated by Department of Agriculture. The "closing date" is the date on which an agribusiness and rural growth fund has collected all of its investment authority.

- fails to maintain eligible investments equal to one hundred percent of its investment authority until the sixth anniversary of its closing date.

- 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 South Carolina.

- invests more than $7,000,000 or twenty percent of its investment authority in the same business concern.

- 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.

The Department of Revenue shall notify the agribusiness and rural growth fund of the reasons for revoking one or more tax credits. The fund has ninety days to correct any violation outlined in the notice to the satisfaction of the Department of Revenue. If the tax credit certificate is revoked, the associated investment authority and credit-eligible capital contributions do not count toward the limit on total investment authority and credit-eligible capital contributions. If a tax credit certificate is revoked after a tax credit has been claimed, then the taxpayer has ninety days to remit the credit amount to the Department of Revenue.

On or after the sixth anniversary of the closing date, an agribusiness and rural growth fund may apply to the Department of Revenue to exit the program. The department has thirty days to respond to the application for exit. If the application is denied, the department must include reasons for the determination. The department may not revoke a tax credit certificate after the rural growth fund's exit from the program.

This bill adds Section 12-69-150 to allow an agribusiness and rural growth fund to request a written opinion from the Department of Revenue as to whether or not a business in which it proposes to invest is an eligible business concern. The department has fifteen days from the receipt of the request to notify the fund of its determination. If a determination is not made by the department within the specified time, the business in which the fund proposes to invest is considered an eligible business concern.

This bill adds Section 12-69-160 to require the agribusiness and rural growth fund to submit a report to the Department of Revenue on or before the fifth day after the second anniversary of the closing date to include:

- A bank statement evidencing eligible investments

- The name, location, and industry of a business receiving an eligible growth investment at the time the investment was made

- 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

- Any other information required by the Department of Revenue

Also, on or before the last day of February following the year in which the report above was submitted, the agribusiness and rural growth fund shall submit an annual report to the Department of Revenue to include:

- 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
- The average annual salary of the position described above
- Any other information required by the Department of Revenue

This bill adds Section 12-69-170 to allow the Department of Revenue to adopt rules and promulgate regulations necessary to carry out the intent and purposes of this chapter.

Since this bill deals with high-risk venture capital investments with an uncertain return on investment, it is difficult to judge the amount of investment that would be undertaken as a result of this legislation. In states that have similar statutes, the amount of tax credits claimed relative to the potential investment levels has been low. It would be difficult to foresee an outcome in South Carolina that would be much different than in similar states operating under similar guidelines and investing parameters. It is not unreasonable to believe that two potential investments could occur due to this legislation. This analysis is based on two projects with credit-eligible capital contributions of an estimated $5,000,000 each. Multiplying the total investment authority of $10,000,000 by the maximum tax credit rate of sixty percent yields $6,000,000 in tax credits. The tax credits shall be claimed in four equal installments beginning in year three. Dividing $6,000,000 in tax credits into four equal installments yields $1,500,000 of tax credits that may be claimed each year. Because the effective date of this act is tax year 2018 and the tax credit must be claimed in four equal installments beginning in year three, this bill would not affect revenue collections until FY 2020-21. This bill, therefore, would reduce General Fund corporation income tax revenue, insurance premium tax revenue, and/or corporation license fee revenue by an estimated $1,500,000 in FY2020-21, and each fiscal year thereafter.

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

Local Expenditure
N/A

Local Revenue
N/A