AN ACT concerning rural economic development; enacting the ad astra rural jobs act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Sections 1 through 11, and amendments thereto, shall be known and may be cited as the ad astra rural jobs act.

Sec. 2. As used in sections 1 through 11, and amendments thereto:

(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 or entity. 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) "Approved investment company" means a person, not including an individual, seeking to make successful developmental venture capital investments in rural business concerns that will create wealth and job opportunities in identified rural areas and that has been approved by the secretary pursuant to section 4, and amendments thereto.

(c) "Closing date" means the date on which an approved investment company collects all of the committed dollar amounts, for purposes of making venture capital investments in rural business concerns, as required under section 4(f), and amendments thereto.

(d) "Credit-eligible capital contribution" means an investment of cash in an approved investment company made:

(1) (A) For an equity interest in the approved investment company; or

(B) for the purchase, at par value or at a premium, of a debt instrument issued by the approved investment company that has a maturity date at least five years from the date of investment; and

(2) by a person subject to income tax liability imposed against such person under the Kansas income tax act, excluding withholding tax imposed under K.S.A. 79-3294 et seq., and amendments thereto, a national banking association, state bank, trust company or savings and loan association paying an annual tax on its net income pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or any insurance company paying the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto.
(e) "Department" means the department of commerce.

(f) "Funding" means any venture capital or venture equity investment by an approved investment company in a rural business concern or any loan to a rural business concern by an approved investment company with a final maturity date of at least two years after the date of issuance.

(g) "Growth capital" means the total of cash investments in an approved investment company, including credit-eligible capital contributions from investors and other cash investments, including government grants, guaranteed debenture funds, or other public funds, in the amount as approved by the secretary and stated on the notice issued under section 4(e), and amendments thereto. At least 60% of growth capital must be comprised of credit-eligible capital contributions. At least 10% of growth capital must be composed of equity investments contributed by affiliates of the approved investment company, including employees, officers and directors of such affiliates.

(h) "Operating company" means a person that is doing business in Kansas or seeking to do business in Kansas and that is not a publicly traded business.

(i) "Person" means an individual, proprietorship, partnership, limited liability partnership, association, trust, estate, firm, group, corporation, limited liability corporation or other organization.

(j) "Principal business operations" means the location where at least 60% of the operating company's employees work or where employees who are paid at least 60% of the operating company's payroll work. An operating company whose principal business operations is not in Kansas that has agreed to move the location of its principal business operations using the proceeds of its funding for a purpose of meeting the definition of a rural business concern shall be deemed to have its principal business operations in the new location at the time of such agreement, subject to the operating company completing the agreed relocation within 180 days after funding.

(k) "Rural area" means a location:

(1) That is not within a city with a population greater than 60,000, or within the urbanized area contiguous and adjacent to the city, according to the most recent decennial United States census; or

(2) determined to be a "rural area" by the secretary upon consideration of factors including, but not limited to:

(A) Population density, density of commercial development and availability of non-farm employment; or

(B) attachment to the urbanized area of a city as defined in paragraph (1) by a contiguous area of urbanized census blocks that is not more than two census blocks wide.

(l) "Rural business concern" means an operating company that:
(1) Has its principal business operations in one or more rural areas in Kansas;
(2) has fewer than 500 employees or had an average federal adjusted gross income of less than $15,000,000 in the three preceding tax years; and
(3) engages in industries related to manufacturing, plant sciences, technology, or agricultural technology or, if not engaged in such industries, the secretary makes a determination that the targeted funding of the operating company will be highly beneficial to the economic growth of the state and the rural area or areas in which the operating company is or will be located.

(m) "Secretary" means the secretary of commerce.

Sec. 3. (a) There is hereby established in the state treasury the ad astra rural jobs fund, which shall be administered by the secretary of commerce. All expenditures from the ad astra rural jobs fund shall be solely for the administration of the ad astra rural jobs act. All expenditures from the ad astra rural jobs fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of commerce or the secretary's designee.

(b) All moneys received by the secretary for the ad astra rural jobs act shall be deposited in the state treasury in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, and shall be credited to the ad astra rural jobs fund.

(c) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the ad astra rural jobs fund interest earnings based on:
(1) The average daily balance of moneys in the ad astra rural jobs fund established by this section for the preceding month; and
(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

Sec. 4. (a) Beginning on January 1, 2018, the department shall accept applications for approved investment companies. The application shall include:
(1) The amount of growth capital sought by the applicant;
(2) either:
(A) A copy of the applicant's or its affiliate'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 and evidence demonstrating that the applicant or its affiliates have invested a minimum amount, as required by rules and regulations promulgated by the secretary, in operating companies and in operating companies located in rural areas; or
(B) evidence demonstrating that the applicant or its affiliates have
invested a minimum amount, as required in rules and regulations
promulgated by the secretary, in non-publicly traded companies through
one or more federal or state tax credit programs administered by an agency
of this state and evidence that the applicant has domiciled in this state for
the three years preceding its application;
(3) an estimate of the number of jobs that will be created or retained
in Kansas as a result of the applicant's funding;
(4) a 10-year business plan for the applicant's proposed funding that
includes a revenue impact assessment prepared by a nationally recognized
third-party independent economic forecasting firm approved by the
secretary, and that projects state and local tax revenue to be generated by
the applicant's funding under the business plan;
(5) an affidavit from each investor in the applicant stating a
commitment to make a credit-eligible capital contribution in support of the
business plan and the amount of such credit-eligible capital contribution;
(6) a nonrefundable application fee not to exceed $5,000; and
(7) such other information as may be required in rules and regulations
promulgated by the secretary.
(b) The secretary shall make an application determination within 60
days of receipt in the order in which applications are received. The
secretary shall deem applications received on the same day as received
simultaneously. Except as provided under section 7(d), and amendments
thereto, the secretary shall not approve more than $166,666,666 in growth
capital and not more than $100,000,000 in credit-eligible contributions
under this section. If requests for growth capital exceed this limitation, the
secretary shall proportionally reduce the growth capital and the credit-
eligible capital contributions for each approved application as necessary to
meet the limitation. No application by an applicant and its affiliates shall
be approved for more than \(\frac{1}{3}\) the limitation provided in this subsection.
(c) The secretary shall deny an application submitted under this
section if:
(1) The application fee is not paid in full;
(2) the applicant does not satisfy all the requirements under
subsection (a)(2);
(3) the revenue impact assessment does not demonstrate that the
applicant's business plan will result in a positive economic impact in a
rural area or areas in Kansas over a 10-year period that exceeds the
cumulative amount of tax credits the applicant seeks;
(4) (A) commitments for credit-eligible capital contributions do not
equal at least 60% of the total growth capital sought under the applicant's
business plan; or
(B) commitments of equity investments contributed by affiliates of
the approved investment company, including employees, officers and
directors of such affiliates, do not equal at least 10% of the total growth
capital sought;
(5) the secretary has already approved the maximum amount of
growth capital and credit-eligible capital contributions allowed under
subsection (b); or
(6) the secretary determines that the applicant does not satisfy any
other requirement of the department as set forth in rules and regulations
promulgated by the secretary.
(d) If the secretary denies an application, the applicant may provide
additional information within 15 days of the notice of denial to the
secretary to complete, clarify or cure defects in the application identified
by the secretary. The secretary shall reconsider the application and make a
determination within 30 days of receiving all additional information to be
considered before approving any pending applications submitted after the
denied applicant's original submission date. The secretary shall not deny
an application or reduce the requested growth capital for reasons other
than those described under subsection (b) or (c).
(e) If the application is approved, the secretary shall provide written
notice to the applicant stating:
(1) The applicant is an approved investment company; and
(2) the approved amount of the growth capital.
(f) (1) After receiving notice of approval from the department
pursuant to subsection (e), an approved investment company shall within
60 days:
(A) Collect the credit-eligible capital contributions from each investor
whose affidavit was listed in the application; and
(B) collect one or more investments of cash that, if added to credit-
eligible capital contributions, equal the approved investment company's
growth capital and deliver to the department documentation sufficient to
prove that such amounts have been collected.
(2) If the approved investment company fails to fully comply with the
provisions of paragraph (1), the approved investment company's approval
shall lapse and the lapsed corresponding growth capital and credit-eligible
capital contributions previously approved by the secretary shall not count
toward the total growth capital and credit-eligible capital contribution
limits of subsection (b). The secretary shall first award lapsed growth
capital pro rata to each approved investment company that was awarded
less than its requested growth capital in the order in which the application
was received. Each approved recipient investment company may allocate
such awarded growth capital to its investors in its discretion. Any
remaining growth capital and available tax credits may be awarded by the
secretary to successful new applicants.
(g) Application fees submitted to the department shall be deposited in the state treasury and credited to the ad astra rural jobs fund. No other fee shall be charged for the administration of tax credits by the department or the department of revenue. If necessary, the department may request and, subject to appropriation acts, shall receive appropriations necessary to implement and administer the program.

(h) The department shall provide a copy of the notice required in subsection (e) to the department of revenue.

Sec. 5. An approved investment company, before making a funding, shall request a written opinion from the department stating whether the business in which it proposes to invest is a rural business concern. The department shall respond to a request with its determination within 30 business days of receiving such request. If the department fails to respond within 30 business days of receiving the request, the business for which determination is sought shall be considered a rural business concern. The department’s determination shall govern whether the business is considered a rural business concern for purposes of sections 1 through 11, and amendments thereto, except for a failure of a rural business concern to complete and maintain any agreed relocations of its principal business operations or for fraud.

Sec. 6. (a) There shall be allowed as a credit against the tax liability of a taxpayer subject to the tax imposed under the Kansas income tax act, the annual tax on net income pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, for taxpayers that make a credit-eligible capital contribution to an approved investment company and that receive a tax credit certificate issued under this section. The credit shall not be sold, transferred or allocated to any other entity, except an affiliate.

(b) The taxpayer shall earn a vested credit equal to the amount of the taxpayer's credit-eligible capital contribution to the approved investment company upon providing documentation to the department of the contribution. Upon review and approval of the documentation, the department shall issue a tax credit certificate in the amount of the tax credit approval by the department to the taxpayer. The taxpayer may claim an amount up to 20% of the tax credit certificate authorized under this section for each of the five tax years beginning on or after July 1, 2019, exclusive of amounts carried forward under subsection (e).

(c) If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount thereof which exceeds the tax liability may be carried forward for deduction from the taxpayer's tax liability in the succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be
carried forward for deduction after the fifth taxable year succeeding the
third taxable year in which such credit initially was claimed.

(d) The maximum amount of credits claimed in any one fiscal year by
all taxpayers pursuant to this section shall not exceed $20,000,000,
exclusive of amounts carried forward under subsection (c).

Sec. 7. (a) The secretary shall revoke a tax credit certificate issued
under section 6, and amendments thereto, upon a determination by the
secretary of commerce that any of the following occur with respect to an
approved investment company before it exits the program in accordance
with subsection (f):

(1) The approved investment company does not invest 100% of its
growth capital in funding within two years of the closing date;
(2) the approved investment company, after investing 100% of its
growth capital in funding, fails to maintain that investment for the five
years after the closing date. An investment that is sold or repaid, in whole
or in part, shall be deemed maintained if the approved investment
company reinvests an amount equal to the returned or recovered portion,
excluding any profits realized, in other funding within 12 months of the
receipt of the returned or recovered portion;
(3) the approved investment company, before exiting the program,
makes a distribution or payment that results in the approved investment
fund having less than 100% of its growth capital invested in fundings or
available for investment in fundings and held as cash or other marketable
securities;
(4) the approved investment company invests more than 20% of its
growth capital in the same rural business concern, including amounts
invested in affiliates of such rural business concern;
(5) the approved investment company invests funding in a rural
business concern that, directly or indirectly through an affiliate, owns has
the right to acquire an ownership interest in, makes a loan to, or makes an
investment in the approved investment company, an affiliate of the
approved investment company, or an investor in the approved investment
company. This paragraph shall not apply to investments in publicly traded
securities by a rural business concern or an owner or affiliate of such rural
business concern. For purposes of this paragraph, an approved investment
company shall not be considered an affiliate of a rural business concern
solely as a result of its funding; or
(6) the approved investment company invests funding in a rural
business concern that fails to meet or maintain an agreed relocation of its
principal business operations.

(b) Before revoking one or more tax credit certificates pursuant to
subsection (a), the secretary shall notify the approved investment company
of the reasons for the pending revocation. The approved investment
company shall have 90 days from the date of such notice to correct the violations to the satisfaction of the secretary and avoid revocation of the tax credit certificate. The approved investment company shall be charged $5,000 per day for each day taken after 90 days to correct the violations, and such amounts shall be deposited in the state treasury to the credit of the ad astra rural jobs fund.

(c) If the secretary revokes a tax credit certificate, the department of revenue shall make an assessment for the amount of the credit claimed by the certificate holder before the certificate was revoked.

(d) If tax credit certificates are revoked under this section, the associated growth capital and credit-eligible capital contributions do not count toward the limit on total growth capital and credit-eligible capital contributions described under section 4(b), and amendments thereto. The secretary shall first award reverted growth capital pro rata to each approved investment company that was awarded less than its requested growth capital. Any remaining growth capital may be awarded by the department to new approved investment companies.

Sec. 8. (a) After five calendar years from the closing date, an approved investment company shall be allowed to leave the program if none of the approved investment company's tax credit certificates were revoked or are pending revocation. The secretary shall release an approved investment company from the program and the regulations of sections 1 through 11, and amendments thereto, within 60 days of receiving a request to exit.

(b) If the number of jobs created or retained by the rural business concerns that received fundings from an approved investment fund through the date of the proposed distribution is:

(1) Less than 60% of the amount projected in the approved investment fund's business plan filed as part of its application for certification, then the state shall receive 30% of any distribution or payment to an equity holder in an approved investment fund in excess of the sum of the amount of equity capital invested in the approved investment fund by such equity holder and an amount equal to any projected increase in the equity holder's federal or state tax liability, including penalties and interest, related to the equity holder's ownership, management or operation of the approved investment fund;

(2) greater than 60% but less than 100% of the amount projected in the approved investment fund's business plan filed as part of its application for certification, then the state shall receive 15% of any distribution or payment to an equity holder in an approved investment fund in excess of the sum of the amount of equity capital invested in the approved investment fund by such equity holder and an amount equal to any projected increase in the equity holder's federal or state tax liability,
including penalties and interest, related to the equity holder's ownership,  
management or operation of the approved investment fund; or  
(3) equal to or greater than the amount projected in the approved  
investment fund's business plan filed as part of its application for  
certification, then the state shall receive 0% of any distribution or payment  
to an equity holder in an approved investment fund in excess of the sum of  
the amount of equity capital invested in the approved investment fund by  
such equity holder and an amount equal to any projected increase in the  
equity holder's federal or state tax liability, including penalties and interest,  
related to the equity holder's ownership, management or operation of the  
approved investment fund.  
(c) The secretary shall not revoke a tax credit certificate due to any  
actions of an approved investment company that occur after the date the  
department acknowledges an approved investment company's exit from  
the program.  
(d) Moneys received by the secretary pursuant to this section shall be  
deposited in the state treasury to the credit of the ad astra rural jobs fund.  
Sec. 9. (a) Each approved investment company shall submit a report  
to the department on or before the fifth business day after the second  
anniversary of the closing date containing:  
(1) The approved investment company's bank statements evidencing  
each funding;  
(2) the name and location of each business receiving funding,  
including evidence that the business qualified as a rural business concern  
at the time the investment was made;  
(3) the number of employment positions created or retained as a  
result of the approved investment company's fundings as of December 31st  
of the preceding year; and  
(4) other information necessary for the department to administer the  
program.  
(b) On or before April 30th of each year following the year in which  
the report required under subsection (a) is due, the approved investment  
company shall submit an annual report to the department containing:  
(1) The number of employment positions created or retained as a  
result of the approved investment company's fundings as of December 31st  
of the preceding calendar year;  
(2) the average annual salary of such positions; and  
(3) any other information required by the department.  
Sec. 10. The secretary of revenue and the secretary of commerce may  
promulgate rules and regulations to implement the provisions of the ad  
astra rural jobs act.  
Sec. 11. (a) Except as provided in subsection (b), the provisions of the  
ad astra rural jobs act shall sunset on December 31 of the sixth year
following the effective date of this act.

(b) Nothing in this section shall be construed so as to preclude a taxpayer that makes a qualified equity investment prior to the sunset of the ad astra rural jobs act from claiming tax credits relating to such qualified equity investment for each credit allowance date.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.