

HOUSE No. 3330

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the Massachusetts rural jobs act.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|----------------------------|---|------------------|
| <i>Stephen Kulik</i> | <i>1st Franklin</i> | <i>1/20/2017</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> | <i>1/17/2018</i> |
| <i>John W. Scibak</i> | <i>2nd Hampshire</i> | <i>1/17/2018</i> |
| <i>José F. Tosado</i> | <i>9th Hampden</i> | <i>1/17/2018</i> |
| <i>Adam G. Hinds</i> | <i>Berkshire, Hampshire, Franklin and Hampden</i> | <i>1/17/2018</i> |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> | <i>1/17/2018</i> |
| <i>Gailanne M. Cariddi</i> | <i>1st Berkshire</i> | <i>1/17/2018</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>1/17/2018</i> |
| <i>Paul W. Mark</i> | <i>2nd Berkshire</i> | <i>1/17/2018</i> |
| <i>Smitty Pignatelli</i> | <i>4th Berkshire</i> | <i>1/17/2018</i> |

HOUSE No. 3330

By Mr. Kulik of Worthington, a petition (accompanied by bill, House, No. 3330) of Stephen Kulik and others relative to capital investments and job creation in rural areas through a nonrefundable tax credit for certain taxpayers. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act establishing the Massachusetts rural jobs act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 63 of the General Laws, as appearing in the 2014 Official Edition,
2 is hereby amended by inserting the following section:-

3 Section 38XX. (a) The purpose of this section shall be to attract capital investment to
4 businesses in rural areas of the commonwealth in order to promote the retention and expansion
5 of existing jobs, stimulate the creation of new jobs, and attract new business and industry to rural
6 areas of the commonwealth.

7 (b) For the purposes of this section, the following words shall, unless the context
8 clearly requires otherwise, have the following meanings:--

9 “Affiliate”, an entity that directly or indirectly through one or more intermediaries,
10 controls, is controlled by, or is under common control with another entity; provided that: (i) an
11 entity is “controlled by” another entity if the controlling person holds, directly or indirectly, the

12 majority voting; (ii) or ownership interest in the controlled person or has control over the day-to-
13 day operations of the controlled person by contract or by law.

14 “Closing date”, the date on which a rural growth fund has collected all of the amounts
15 specified by subsection (c).

16 “Credit-eligible capital contribution”, an investment of cash by a person subject to tax
17 under this chapter in a rural growth fund that equals the amount specified on a tax credit
18 certificate issued by the MOBD under paragraph (5) of subsection (c) of this section; provided
19 that the investment shall purchase an equity interest in the rural growth fund or purchase, at par
20 value or premium, a debt instrument that has a maturity date at least 5 years from the closing
21 date.

22 “MOBD”, the Massachusetts office of business development established in section 3A
23 of Chapter 23A.

24 “Investment authority”, the amount stated on the notice issued under paragraph (5) of
25 subsection (c) of this section certifying the rural growth fund; provided however that at least 60
26 per cent of a rural growth fund's investment authority shall be comprised of credit-eligible capital
27 contributions.

28 “Principal business operations”, the principal operations of a business are located at the
29 place or places where at least 60 per cent of its employees work or where employees that are paid
30 at least 60 per cent of its payroll work; provided however, that an out-of-state business that has
31 agreed to relocate employees using the proceeds of a rural growth investment to establish its
32 principal business operations in a rural area in the commonwealth shall be deemed to have its

33 principal business operations in this new location provided it satisfies this definition within 180
34 days after receiving the rural growth investment, unless the MOBD agrees to a later date.

35 “Rural area”, an area of the commonwealth not in a city or town that has a population of
36 more than 50,000 according to the latest decennial census of the United States or in the
37 urbanized area contiguous and adjacent to a city or town that has a population of more than
38 50,000 inhabitants; or any area determined to be “rural in character” by the under-secretary of
39 agriculture for rural development within the United States department of agriculture.

40 “Rural business concern”, a business that, at the time of the initial investment in the
41 company by a rural growth fund: (i) has less than 250 employees and not more than \$10,000,000
42 in net income for the preceding taxable year; (ii) has its principal business operations in one or
43 more rural areas in the Commonwealth; and (iii) is engaged in industries related to
44 manufacturing, plant sciences, services or technology or, if not engaged in such industries, the
45 MOBD makes a determination that the investment will be highly beneficial to the economic
46 growth of the commonwealth.

47 “Rural growth fund”, an entity certified by the MOBD under subsection (c).

48 “Rural growth investment”, any capital or equity investment in a rural business concern
49 or any loan to a rural business concern with a stated maturity at least one year after the date of
50 issuance.

51 (c) (1) The MOBD shall accept applications for approval as a rural growth fund;
52 provided, however, that the application shall include:

53 (i) the total investment authority sought by the applicant under the business plan;

54 (ii) documents and other evidence sufficient to prove, to the satisfaction of the MOBD,
55 that the applicant meets all of the following criteria:

56 (A) copy of the applicant or an affiliate of the applicant's license as a rural business
57 investment company under 7 U.S.C. 2009cc, or as a small business investment company under
58 15 U.S.C.681; and

59 (B) evidence that as of the date the application is submitted, the applicant or affiliates of
60 the applicant have invested at least \$100,000,000 in non-public companies located in rural areas;

61 (iii) an estimate of the number of jobs that will be created or retained in this
62 commonwealth as a result of the applicant's rural growth investments;

63 (iv) a business plan that includes a revenue impact assessment projecting state and local
64 tax revenue to be generated by the applicant's proposed rural growth investments prepared by a
65 nationally recognized third-party independent economic forecasting firm using a dynamic
66 economic forecasting model that analyzes the applicant's business plan over the 10 years
67 following the date the application is submitted to the MOBD;

68 (v) a signed affidavit from each investor stating the amount of credit-eligible capital
69 contributions each taxpayer commits to make; and

70 (vi) a non-refundable application fee of \$5,000.

71 (2) The MOBD shall make an application determination within 30 days of receipt in the
72 order in which the applications are received. The MOBD shall deem applications received on the
73 same day to have been received simultaneously. The MOBD shall not approve more than
74 \$200,000,000 in investment authority and not more than \$60,000,000 in credit-eligible capital

75 contributions under this section. If requests for investment authority exceed this limitation, the
76 MOBD shall proportionally reduce the investment authority and the credit-eligible capital
77 contributions for each approved application as necessary to avoid exceeding the limit.

78 (3) the MOBD shall deny an application submitted under this section if any of the
79 following are true:

80 (i) the application is incomplete or the application fee is not paid in full;

81 (ii) the applicant does not satisfy all the criteria described in clause (ii) of paragraph (1)
82 of this subsection;

83 (iii) the revenue impact assessment submitted under clause (iv) of paragraph (1) of this
84 subsection does not demonstrate that the applicant's business plan will result in a positive
85 economic impact on this commonwealth over a 10-year period that exceeds the cumulative
86 amount of tax credits that would be issued to the applicant's investors under subsection (d) of
87 this section if the application were approved;

88 (iv) the credit-eligible capital contributions described in affidavits submitted under
89 clause (v) of paragraph (1) of this subsection do not equal at least 60 per cent of the total amount
90 of investment authority sought under the applicant's business plan; or

91 (v) the MOBD has already approved the maximum amount of investment authority and
92 credit eligible capital contributions allowed under paragraph (2) of this subsection.

93 (4) If the MOBD denies an application, the applicant may provide additional
94 information to the MOBD to complete, clarify, or cure defects in the application identified by
95 the MOBD within 15 days of the notice of denial for reconsideration and determination. The

96 MOBD shall review and reconsider such applications within 30 days before any pending
97 application submitted after the original submission date of the reconsidered application.

98 (5) The MOBD shall not deny a rural growth fund application or reduce the requested
99 investment authority for reasons other than those described in paragraphs (2) and (3) of this
100 subsection. Upon approval of an application, the MOBD shall provide a written approval to the
101 applicant as a rural growth fund specifying the amount of the applicant's investment authority
102 and a tax credit certificate to each investor whose affidavit was included in the application
103 specifying the amount of the investor's credit-eligible capital contribution.

104 (6) After receiving the approval issued under paragraph (5) of this subsection, a rural
105 growth fund shall:

106 (i) within 60 days:

107 (A) collect the credit-eligible capital contributions from each taxpayer issued a tax credit
108 certificate under paragraph 5 of this subsection; and

109 (B) collect one or more investments of cash that, when added to the contributions
110 collected under clause (i) of this paragraph, equal the rural growth fund's investment authority;
111 provided that at least 10 percent of the rural growth fund's investment authority shall be
112 comprised of equity investments contributed by affiliates of the rural growth fund, including
113 employees, officers, and directors of such affiliates.

114 (ii) within 65 days, send to the MOBD documentation sufficient to prove that the
115 amounts described in clause (i) of this paragraph have been collected.

116 (7) If the rural growth fund fails to fully comply with paragraph (6) of this subsection,
117 the rural growth fund's approval shall lapse and the corresponding investment authority and
118 credit-eligible capital contributions under paragraph (6) will not count toward the limits on the
119 program size prescribed by paragraph (2) of this subsection. The MOBD shall first award lapsed
120 investment authority pro rata to each rural growth fund that was awarded less than the requested
121 investment authority under said paragraph (2) which a rural growth fund may allocate to its
122 investors in its discretion. Any remaining investment authority may be awarded by the MOBD to
123 new applicants.

124 (8) Application fees submitted to the MOBD under clause (vi) of paragraph (1) of this
125 subsection shall be credited to the Massachusetts rural jobs fund, which is hereby created, and
126 used by the MOBD to administer provisions of this section.

127 (d) (1) There is hereby allowed a nonrefundable tax credit for taxpayers that made a
128 credit-eligible capital contribution to a rural growth fund and were issued a tax credit certificate
129 under paragraph 5 of subsection (c) of this section. The credit may be claimed against the tax
130 imposed by this chapter. The credit may not be sold, transferred or allocated to any other entity
131 other than an affiliate subject to the tax imposed by this chapter.

132 (2) On the closing date, the taxpayer shall earn a vested credit equal to the amount of the
133 taxpayer's credit-eligible capital contribution to the rural growth fund as specified on the tax
134 credit certificate. The taxpayer may claim up to 25 percent of the credit authorized under this
135 subsection for each of the taxable years that includes the third through sixth anniversaries of the
136 closing date, exclusive of amounts carried forward pursuant to paragraph 3 of this subsection.

137 (3) If the amount of the credit for a taxable year exceeds the tax otherwise due for that
138 year, the excess shall be carried forward to ensuing taxable years until fully used. A taxpayer
139 claiming a credit under this section shall submit a copy of the tax credit certificate with the
140 taxpayer's return for each taxable year for which the credit is claimed.

141 (e)(1) The MOBD shall revoke a tax credit certificate issued under subsection (c) if
142 any of the following occurs with respect to a rural growth fund before it exits the program in
143 accordance with paragraph (5) of this subsection:

144 (i) the rural growth fund in which the credit-eligible capital contribution was made does
145 not invest 100 per cent of its investment authority in rural growth investments in this
146 commonwealth within 2 years of the closing date;

147 (ii) the rural growth fund, after satisfying clause (i), fails to maintain rural growth
148 investments equal to 100 percent of its investment authority until the sixth anniversary of the
149 closing date; provided however, that, an investment is "maintained" even if the investment is
150 sold or repaid so long as the rural growth fund reinvests an amount equal to the capital returned
151 or recovered by the fund from the original investment, exclusive of any profits realized, in other
152 rural growth investments in this commonwealth within 12 months of the receipt of such capital;
153 provided further that amounts received periodically by a rural growth fund shall be treated as
154 continually invested in rural growth investments if the amounts are reinvested in one or more
155 rural growth investments by the end of the following calendar year; and provided further that a
156 rural growth fund is not required to reinvest capital returned from rural growth investments after
157 the fifth anniversary of the closing date, and such rural growth investments shall be considered
158 held continuously by the rural growth fund through the sixth anniversary of the closing date;

159 (iii) the rural growth fund, before exiting the program in accordance with paragraph (4)
160 of this subsection, makes a distribution or payment that results in the rural growth fund having
161 less than 100 per cent of its investment authority invested in rural growth investments in this
162 commonwealth or available for investment in rural growth investments and held in cash and
163 other marketable securities;

164 (iv) the rural growth fund invests more than the greater of \$5,000,000 or 20 per cent of
165 its investment authority in the same rural business concern, including amounts invested in
166 affiliates of the rural business concern; or

167 (v) the rural growth fund makes a rural growth investment in a rural business concern
168 that directly or indirectly through an affiliate owns, has the right to acquire an ownership interest,
169 makes a loan to, or makes an investment in the rural growth fund, an affiliate of the rural growth
170 fund, or an investor in the rural growth fund; provided however, that this clause does not apply to
171 investments in publicly traded securities by a rural business concern or an owner or affiliate of
172 such concern; and provided further that a rural growth fund will not be considered an affiliate of
173 a rural business concern solely as a result of its rural growth investment.

174 (2) Before revoking one or more tax credit certificates under this subsection, the MOBD
175 shall notify the rural growth fund of the reasons for the pending revocation. The rural growth
176 fund shall have 90 days from the date the notice was dispatched to correct any violation outlined
177 in the notice to the satisfaction of the MOBD and avoid revocation of the tax credit certificate.

178 (3) If tax credit certificates are revoked under this subsection, the associated investment
179 authority and credit-eligible capital contributions shall not count toward the limit on total
180 investment authority and credit-eligible capital contributions described in paragraph (2) of

181 subsection (c). The MOBD shall first award reverted authority pro rata to each rural growth fund
182 that was awarded less than the requested investment authority under paragraph (5) of subsection
183 (c). The MOBD may award any remaining investment authority to new applicants.

184 (4) On or after the sixth anniversary of the closing date, a rural growth fund may apply
185 to the MOBD to exit the program and no longer be subject to regulation hereunder. The MOBD
186 shall respond to the application within 30 days of receipt. In evaluating the application, the fact
187 that no tax credit certificates have been revoked and that the rural growth fund has not received a
188 notice of revocation that has not been cured under paragraph (2) of this subsection shall be
189 sufficient evidence to prove that the rural growth fund is eligible for exit. The MOBD shall not
190 unreasonably deny an application submitted under this paragraph. If the application is denied, the
191 notice shall include the reasons for the determination.

192 (5) The MOBD shall not revoke a tax credit certificate after the rural growth fund's exit
193 from the program.

194 (f) A rural growth fund, before making a rural growth investment, may request from the
195 MOBD a written opinion as to whether the business in which it proposed to invest is a rural
196 business concern. The MOBD, not later than the fifteenth business day after the date of receipt of
197 the request, shall notify the rural growth fund of its determination. If the MOBD fails to notify
198 the rural growth fund by the fifteenth business day of its determination, the business in which the
199 rural growth fund proposes to invest shall be considered a rural business concern.

200 (g)(1) Each rural growth fund shall submit a report to the MOBD on or before the fifth
201 business day after the second anniversary of the closing date. The report shall provide
202 documentation as to the rural growth fund's rural growth investments and include:

- 203 (i) a bank statement evidencing each rural growth investment;
- 204 (ii) the name, location and industry of each business receiving a rural growth
205 investment, including either the determination letter set forth in subsection (f) or evidence that
206 the business qualified as a rural business concern at the time the investment was made;
- 207 (iii) the number of employment positions created or retained as a result of the rural
208 growth fund's rural growth investments as of the last day of the preceding calendar year; and
- 209 (iv) any other information required by the MOBD.

210 (2) On or before the last day of February of each year following the year in which the
211 report required under paragraph (1) of this subsection is due, the rural growth fund shall submit
212 an annual report to the MOBD including the following:

- 213 (i) the number of employment positions created or retained as a result of the rural
214 growth fund's rural growth investments as of the last day of the preceding calendar year;
- 215 (ii) the average annual salary of the positions described in clause (i) of this paragraph;
216 and
- 217 (iii) any other information required by the MOBD.

218 (h) The MOBD shall adopt rules necessary to implement the provisions in this section.

219 SECTION 2. The MOBD shall accept applications for approval as a rural growth fund as
220 required under subsection (c) of section 38XX of chapter 63 of the General Laws not more than
221 90 days after the effective date of this act.