

# **HOUSE . . . . . No. 4216**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, February 15, 2018.

The committee on Revenue to whom was referred the 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, reports recommending that the accompanying bill (House, No. 4216) ought to pass.

For the committee,

JAY R. KAUFMAN.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
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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 is hereby amended by inserting after  
2 section 38FF the following section:-

3           Section 38GG. (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 clearly  
8 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. An entity is  
11 “controlled by” another entity if: (i) the controlling entity holds, directly or indirectly, the  
12 majority voting or ownership interest in the controlled entity; or (ii) has control over the day-to-  
13 day operations of the controlled entity 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 however, that the investment shall purchase an equity interest in the rural growth fund or  
20 purchase, at par value or premium, a debt instrument that has a maturity date at least 5 years  
21 from the closing date.

22 “MOBD”, the Massachusetts office of business development established in section 3A of  
23 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 “Jobs created”, newly created positions of employment that were not previously located  
29 in the commonwealth at the time of the initial rural growth investment in the rural business  
30 concern and that require a minimum of 35 hours worked each week, measured each year by  
31 subtracting the number of employment positions at the time of the initial rural growth investment  
32 in the rural business concern from the monthly average of employment positions for the  
33 applicable year. The monthly average shall be calculated by adding together the number of  
34 employment positions existing on the last day of each month of the applicable year and dividing  
35 by 12. Such number shall not be less than zero.

36 “Jobs retained”, positions requiring a minimum of 35 hours worked each week that  
37 existed prior to the initial rural growth investment. Retained jobs shall be counted each year  
38 based on the monthly average of employment positions for the applicable year. The monthly  
39 average shall be calculated by adding together the number of employment positions existing on  
40 the last day of each month of the applicable year and dividing by 12. Such number shall not  
41 exceed the initial amount of retained jobs reported and shall be reduced each year if employment  
42 at the rural business concern drops below such number.

43 “Principal business operations”, the principal operations of a business are located at the  
44 place or places where at least 60 per cent of its employees work or where employees that are paid  
45 at least 60 per cent of its payroll work; provided, however, that an out-of-state business that has  
46 agreed to relocate employees using the proceeds of a rural growth investment to establish its  
47 principal business operations in a rural area in the commonwealth shall be deemed to have its  
48 principal business operations in this new location if it satisfies this definition within 180 days  
49 after receiving the rural growth investment, unless the MOBD agrees to a later date.

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

55 “Rural business concern”, a business that, at the time of the initial investment in the  
56 company by a rural growth fund: (i) has less than 250 employees and not more than \$10,000,000  
57 in revenue for the preceding taxable year; (ii) has its principal business operations in one or more

58 rural areas in the commonwealth; and (iii) is engaged in industries related to manufacturing,  
59 plant sciences, services or technology or, if not engaged in such industries, the MOBD makes a  
60 determination that the investment will be highly beneficial to the economic growth of the  
61 commonwealth.

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

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

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

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

69 (ii) the following documents and other evidence:

70 (A) a copy of the applicant’s or an affiliate of the applicant’s license as a rural business  
71 investment company under 7 U.S.C. 2009cc, or as a small business investment company under  
72 15 U.S.C. 681; and

73 (B) evidence sufficient to prove, to the satisfaction of the MOBD, that as of the date the  
74 application is submitted, the applicant or affiliates of the applicant have invested at least  
75 \$100,000,000 in non-public companies located in rural areas;

76 (iii) an estimate of the number of jobs created and jobs retained in the commonwealth as  
77 a result of the applicant's rural growth investments;

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

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

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

86 (2) The MOBD shall make an application determination within 30 days of receipt in the  
87 order in which the applications are received. The MOBD shall deem applications received on the  
88 same day to have been received simultaneously. The MOBD shall not approve more than  
89 \$200,000,000 in investment authority and not more than \$120,000,000 in credit-eligible capital  
90 contributions under this section. If a request for investment authority exceeds this limitation, the  
91 MOBD shall reduce the investment authority and the credit-eligible capital contributions for that  
92 application as necessary to avoid exceeding the limit. If multiple applications received on the  
93 same day request a combined investment authority that exceeds this limitation, the MOBD shall  
94 proportionally reduce the investment authority and the credit eligible capital contributions for  
95 those applications as necessary to avoid exceeding the limit.

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

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

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

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

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

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

111 (4) If the MOBD denies an application, the applicant may provide additional information  
112 to the MOBD to complete, clarify, or cure defects in the application identified by the MOBD  
113 within 15 days of the notice of denial for reconsideration and determination. If the applicant  
114 completes, clarifies or cures its application within 15 days after the date of the notice of denial,  
115 the application must be considered complete as of the original date of submission. If the  
116 applicant fails to provide the information to complete, clarify or cure its application within the  
117 15-day period, the application remains denied and must be resubmitted in full with a new date of  
118 submission. The MOBD shall review and reconsider such applications within 30 days and before  
119 any pending application submitted after the original submission date of the reconsidered  
120 application.

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

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

129 (i) within 60 days:

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

132 (B) collect one or more investments of cash that, when added to the contributions  
133 collected under clause (A) of this paragraph, equal the rural growth fund's investment authority;  
134 provided, however, that at least 10 per cent of the rural growth fund's investment authority shall  
135 be comprised of equity investments contributed by affiliates of the rural growth fund, including  
136 employees, officers, and directors of such affiliates; and

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

139 (7) If the rural growth fund fails to fully comply with paragraph (6) of this subsection, the  
140 rural growth fund's approval shall lapse and the corresponding investment authority and credit-  
141 eligible capital contributions under paragraph (6) will not count toward the limits on the program



142 size prescribed by paragraph (2) of this subsection. The MOBD shall first award lapsed  
143 investment authority pro rata to each rural growth fund that was awarded less than the requested  
144 investment authority under said paragraph (2) which a rural growth fund may allocate to its  
145 investors in its discretion. Any remaining investment authority may be awarded by the MOBD to  
146 new applicants.

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

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

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

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

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

167 (i) the rural growth fund in which the credit-eligible capital contribution was made does  
168 not invest 100 per cent of its investment authority in rural growth investments in this  
169 commonwealth within 2 years of the closing date; provided, however, that, for the purpose of  
170 satisfying the requirements of this subparagraph, the maximum amount of rural growth  
171 investments that a rural growth fund may count with respect to a single rural business concern,  
172 including amounts invested in affiliates of the rural business concern, may not exceed the greater  
173 of \$5,000,000 or 20 per cent of the rural growth fund's investment authority;

174 (ii) the rural growth fund, after satisfying clause (i), fails to maintain rural growth  
175 investments equal to 100 per cent of its investment authority until the sixth anniversary of the  
176 closing date; provided, however, that an investment is "maintained" even if the investment is  
177 sold or repaid so long as the rural growth fund reinvests an amount equal to the capital returned  
178 or recovered by the fund from the original investment, exclusive of any profits realized, in other  
179 rural growth investments in this commonwealth within 12 months of the receipt of such capital;  
180 provided further, that amounts received periodically by a rural growth fund shall be treated as  
181 continually invested in rural growth investments if the amounts are reinvested in 1 or more rural  
182 growth investments by the end of the following calendar year; provided further, that a rural  
183 growth fund is not required to reinvest capital returned from rural growth investments after the  
184 fifth anniversary of the closing date, and such rural growth investments shall be considered held  
185 continuously by the rural growth fund through the sixth anniversary of the closing date; provided  
186 further, that, for purposes of satisfying the requirements of this sub-paragraph, the maximum

187 amount of rural growth investments that a rural growth fund may count with respect to a single  
188 rural business concern, including amounts invested in affiliates of the rural business concern,  
189 may not exceed the greater of \$5,000,000 or 20 per cent of the rural growth fund's investment  
190 authority;

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

196 (iv) the rural growth fund makes a rural growth investment in a rural business concern  
197 that directly or indirectly through an affiliate owns, has the right to acquire an ownership interest,  
198 makes a loan to, or makes an investment in the rural growth fund, an affiliate of the rural growth  
199 fund, or an investor in the rural growth fund; provided, however, that this clause does not apply  
200 to investments in publicly traded securities by a rural business concern or an owner or affiliate of  
201 such concern; and provided further, that a rural growth fund will not be considered an affiliate of  
202 a rural business concern solely as a result of its rural growth investment.

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

207 (3) If tax credit certificates are revoked under this subsection, the associated investment  
208 authority and credit-eligible capital contributions shall not count toward the limit on total

209 investment authority and credit-eligible capital contributions described in paragraph (2) of  
210 subsection (c). The MOBD shall first award reverted authority pro rata to each rural growth fund  
211 that was awarded less than the requested investment authority under paragraph (5) of subsection  
212 (c). The MOBD may award any remaining investment authority to new applicants.

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

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

223 (6) Once a rural growth fund has been determined to be eligible to exit under paragraph  
224 (4), if the number of jobs created or jobs retained by the rural business concerns that received  
225 rural growth investments from the rural growth fund, calculated pursuant to reports filed by the  
226 rural growth fund pursuant to subsection (g), is:

227 (i) less than 60 per cent of the number projected in the rural growth fund's business plan  
228 filed as part of its application for certification under subsection (c) of this section, then the  
229 commonwealth shall receive 20 per cent of any distribution or payment made to the equity  
230 holders of the rural growth fund in excess of the rural growth fund's investment authority and

231 an amount equal to any projected increase in the equity holders' federal or state tax liability,  
232 including penalties and interest, related to the equity holders' ownership, management or  
233 operation of the fund; or

234 (ii) greater than 60 per cent but less than 80 per cent of the number projected in the rural  
235 growth fund's business plan filed as part of its application for certification under subsection (c)  
236 of this section, then the state shall receive 10 per cent of any distribution or payment made to the  
237 equity holders of the rural growth fund in excess of the rural growth fund's investment authority  
238 and an amount equal to any projected increase in the equity holders' federal or state tax liability,  
239 including penalties and interest, related to the equity holders' ownership, management or  
240 operation of the fund.

241 (7) If the rural growth fund's rural growth investments achieved a 20 per cent or greater  
242 internal rate of return, the state shall receive 10 per cent of any distribution or payment made to  
243 the equity holders of the rural growth fund in excess of the rural growth fund's investment  
244 authority and an amount equal to any projected increase in the equity holders' federal or state tax  
245 liability, including penalties and interest, related to the equity holders' ownership of the fund.  
246 Any amounts payable to the state pursuant to paragraph (6) of this subsection shall be in addition  
247 to amounts due under this paragraph.

248 (f) A rural growth fund, before making a rural growth investment, may request from the  
249 MOBD a written opinion as to whether the business in which it proposed to invest is a rural  
250 business concern. The MOBD, not later than the fifteenth business day after the date of receipt of  
251 the request, shall notify the rural growth fund of its determination. If the MOBD fails to notify

252 the rural growth fund by the fifteenth business day of its determination, the business in which the  
253 rural growth fund proposes to invest shall be considered a rural business concern.

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

257 (i) a bank statement evidencing each rural growth investment;

258 (ii) the name, location and industry of each business receiving a rural growth investment,  
259 including either the determination letter set forth in subsection (f) or evidence that the business  
260 qualified as a rural business concern at the time the investment was made;

261 (iii) the number of jobs created or jobs retained as a result of the rural growth fund's rural  
262 growth investments as of the last day of the preceding two calendar years; provided, however,  
263 that job numbers shall be certified by each rural business concern's independent certified public  
264 accountant that is licensed to do business in the commonwealth or by the rural growth fund's  
265 nationally recognized independent certified public accounting firm. MOBD shall publish a list of  
266 nationally recognized independent certified public accounting firms, which must include at least  
267 10 firms, within 12 months of certifying the first rural growth fund and periodically update such  
268 list as MOBD deems appropriate; and

269 (iv) any other information required by the MOBD.

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

273 (i) the number of jobs created or jobs retained as a result of the rural growth fund's rural  
274 growth investments as of the last day of the preceding calendar year, which number shall be  
275 independently certified in accordance with the provisions of subparagraph (iii) of paragraph (3)  
276 of this subsection;

277 (ii) the average annual salary of the positions described in clause (i) of this paragraph;  
278 and

279 (iii) any other information required by the MOBD.

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

281 SECTION 2. The MOBD shall accept applications for approval as a rural growth fund as  
282 required under subsection (c) of section 38GG of chapter 63 of the General Laws not more than  
283 90 days after the effective date of this act.