HOUSE DOCKET, NO. 3159 FILED ON: 1/18/2019

HOUSE . . . . . No. 2408

The Commonwealth of Massachusetts

PRESENTED BY:

Natalie M. Blais

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:
Natalie M. Blais	*1st Franklin*	*1/18/2019*
Tricia Farley-Bouvier	*3rd Berkshire*	*1/27/2019*
Carmine Lawrence Gentile	*13th Middlesex*	*1/27/2019*
Susan Williams Gifford	*2nd Plymouth*	*1/28/2019*
Steven S. Howitt	*4th Bristol*	*1/28/2019*
John Barrett, III	*1st Berkshire*	*1/29/2019*
Michael D. Brady	*Second Plymouth and Bristol*	*2/1/2019*
Michelle L. Ciccolo	*15th Middlesex*	*2/1/2019*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*1/30/2019*
Marjorie C. Decker	*25th Middlesex*	*2/1/2019*
Mindy Domb	*3rd Hampshire*	*1/28/2019*
Denise C. Garlick	*13th Norfolk*	*1/31/2019*
Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*	*1/29/2019*
Carlos González	*10th Hampden*	*1/30/2019*
Patrick Joseph Kearney	*4th Plymouth*	*2/1/2019*
Mary S. Keefe	*15th Worcester*	*1/30/2019*
Paul W. Mark	*2nd Berkshire*	*2/1/2019*

Norman J. Orrall	*12th Bristol*	*1/30/2019*
Denise Provost	*27th Middlesex*	*1/31/2019*
David M. Rogers	*24th Middlesex*	*2/1/2019*
Bud L. Williams	*11th Hampden*	*1/30/2019*

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HOUSE . . . . . No. 2408

By Ms. Blais of Sunderland, a petition (accompanied by bill, House, No. 2408) of Natalie M. Blais and others for legislation to attract capital investment to businesses in rural areas. Revenue.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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:

SECTION 1. Chapter 63 of the General Laws is hereby amended by inserting after section 38FF the following section:-

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

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

"Affiliate", an entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another entity. An entity is "controlled by" another entity if: (i) the controlling entity holds, directly or indirectly, the

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

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

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

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

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

"Jobs created", newly created positions of employment that were not previously located in the commonwealth at the time of the initial rural growth investment in the rural business concern and that require a minimum of 35 hours worked each week, measured each year by subtracting the number of employment positions at the time of the initial rural growth investment in the rural business concern from the monthly average of employment positions for the applicable year. The monthly average shall be calculated by adding together the number of

employment positions existing on the last day of each month of the applicable year and dividing by 12. Such number shall not be less than zero.

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

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

"Rural area", a municipality with population densities of less than 500 residents per square mile, according to the latest decennial census of the United States.

"Rural business concern", a business that, at the time of the initial investment in the company by a rural growth fund: (i) has less than 250 employees and not more than $10,000,000 in revenue for the preceding taxable year; (ii) has its principal business operations in one or more rural areas in the commonwealth; and (iii) is engaged in industries related to manufacturing,

plant sciences, services or technology or, if not engaged in such industries, the MOBD makes a determination that the investment will be highly beneficial to the economic growth of the commonwealth.

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

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

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

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

(ii) the following documents and other evidence:

(A) a copy of the applicant's or an affiliate 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; and

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

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

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

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

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

(2) The MOBD shall make an application determination within 30 days of receipt in the order in which the applications are received. The MOBD shall deem applications received on the same day to have been received simultaneously. The MOBD shall not approve more than $100,000,000 in investment authority and not more than $60,000,000 in credit-eligible capital contributions under this section. If a request for investment authority exceeds this limitation, the MOBD shall reduce the investment authority and the credit-eligible capital contributions for that application as necessary to avoid exceeding the limit. If multiple applications received on the same day request a combined investment authority that exceeds this limitation, the MOBD shall proportionally reduce the investment authority and the credit eligible capital contributions for those applications as necessary to avoid exceeding the limit.

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

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

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

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

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

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

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

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

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

(i) within 60 days:

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

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

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

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

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

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

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

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

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

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

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

(ii) the rural growth fund, after satisfying clause (i), fails to maintain rural growth investments equal to 100 per cent of its investment authority until the sixth anniversary of the closing date; provided, however, that an investment is "maintained" even if the investment is sold or repaid so long as the rural growth 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 rural growth investments in this commonwealth within 12 months of the receipt of such capital; provided further, that amounts received periodically by a rural growth fund shall be treated as continually invested in rural growth investments if the amounts are reinvested in 1 or more rural growth investments by the end of the following calendar year; provided further, that, for purposes of satisfying the requirements of this sub-paragraph, the maximum amount of rural growth investments that a rural growth fund may count with respect to a single rural business concern, including amounts invested in affiliates of the rural business concern, may not exceed the greater of $5,000,000 or 20 per cent of the rural growth fund's investment authority;

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

(iv) the rural growth fund makes a rural 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 rural growth fund, an affiliate of the rural growth fund, or an investor in the rural growth fund; provided, however, that this clause does not apply to investments in publicly traded securities by a rural business concern or an owner or affiliate of such concern; and provided further, that a rural growth fund will not be considered an affiliate of a rural business concern solely as a result of its rural growth investment.

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

(3) If tax credit certificates are revoked under this subsection, the associated investment authority and credit-eligible capital contributions shall not count toward the limit on total investment authority and credit-eligible capital contributions described in paragraph (2) of subsection (c). The MOBD shall first award reverted authority pro rata to each rural growth fund that was awarded less than the requested investment authority under paragraph (5) of subsection (c). The MOBD may award any remaining investment authority to new applicants.

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

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

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

(i) less than 60 per cent of the number projected in the rural growth fund's business plan filed as part of its application for certification under subsection (c) of this section, then the commonwealth shall receive 20 per cent of any distribution or payment made to the equity holders of the rural growth fund in excess of the rural growth fund's investment authority and an amount equal to any projected increase in the equity holders' federal or state tax liability, including penalties and interest, related to the equity holders' ownership, management or operation of the fund; or

(ii) greater than 60 per cent but less than 80 per cent of the number projected in the rural growth fund's business plan filed as part of its application for certification under subsection (c) of this section, then the state shall receive 15 per cent of any distribution or payment made to the equity holders of the rural growth fund in excess of the rural growth fund's investment authority and an amount equal to any projected increase in the equity holders' federal or state tax liability, including penalties and interest, related to the equity holders' ownership, management or operation of the fund.

(7) If the rural growth fund's rural growth investments achieved a 20 per cent or greater internal rate of return, the state shall receive 15 per cent of any distribution or payment made to the equity holders of the rural growth fund in excess of the rural growth fund's investment authority and an amount equal to any projected increase in the equity holders' federal or state tax liability, including penalties and interest, related to the equity holders' ownership of the fund. Any amounts payable to the state pursuant to paragraph (6) of this subsection shall be in addition to amounts due under this paragraph.

(8) All amounts payable to the state pursuant to paragraph (6) and (7) of this subsection shall be subject to appropriation for purposes of supporting Rural School Aid, as established in Chapter 154 of the Acts of 2018.

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

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

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

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

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

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

(iv) any other information required by the MOBD.

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

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

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

(iii) any other information required by the MOBD.

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

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