HB212

115349-1

By Representatives Ward, McClurkin, Love, Mask, Canfield and Hubbard

RFD: Education Appropriations

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SYNOPSIS: This bill would provide tax incentives to Alabama companies that create jobs. This bill would provide inducements for businesses located in Alabama. This bill would provide certain requirements in order to qualify for the tax incentives.

A BILL
TO BE ENTITLED
AN ACT

To provide tax incentives for companies in Alabama and to provide requirements and standards for qualifying for certain tax incentives.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The following words shall have the following meanings:

(1) CORPORATE HEADQUARTERS. A facility or portion of a facility where corporate staff employees are physically employed and where the majority of a company's or company

business unit's financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled either on a regional, national, or global basis. A corporate headquarters must be a regional corporate headquarters, a national corporate headquarters, or global corporate headquarters as defined below:

a. National corporate headquarters must be the sole corporate headquarters in the nation and handle headquarters-related functions at least on a national basis. A national headquarters is considered to handle headquarters-related functions on a national basis from this state if the corporation has a facility in this state from which the corporation engages in interstate commerce by providing goods or services for customers outside of this state in return for compensation.

b. Regional corporate headquarters must be the sole corporate headquarters within the region and must handle headquarters-related functions on a regional basis. Region or regional means a geographic area comprised of two or more states, including this state.

(2) DISTRIBUTION FACILITY. An establishment where shipments of tangible personal property are processed for delivery to customers. The term does not include an establishment where retail sales of tangible personal property are made to retail customers on more than 12 days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also

processes shipments of tangible personal property to customers and if at least 75 percent of the dollar amount of goods sold through the facility are sold to customers outside of Alabama. Retail sales made inside the facility to employees working at the facility are not considered for purposes of the 12-day and 75 percent limitation.

(3) EXTRAORDINARY RETAIL ESTABLISHMENT. A single store located in Alabama within two miles of an interstate highway or in a county with at least three and one-half million visitors a year, and it must be a destination retail establishment which attracts at least two million visitors a year with at least 35 percent of those visitors traveling at least 50 miles to the establishment. The extraordinary retail establishment must have a capital investment of at least twenty-five million dollars ($25,000,000) including land, buildings, and site preparation costs, and one or more hotels must be built to service the establishment within three years of occupancy. Only establishments which receive a certificate of occupancy after July 1, 2009, qualify. The Alabama Tourism Department shall determine and annually certify whether a retail establishment meets these criteria and its judgment is conclusive. The extraordinary retail establishment annually must collect and remit at least two million dollars in sales taxes but is not required to collect or remit admission taxes.

(4) FULL-TIME JOB. A job requiring a minimum of 35 hours of an employee's time a week for the entire normal year of company operations or a job requiring a minimum of 35 hours

of an employee's time for a week for a year in which the employee was hired initially for or transferred to the Alabama facility. For the purposes of this act, two half-time jobs are considered one full-time job. A half-time job is a job requiring a minimum of 20 hours of an employee's time a week for the entire normal year of the company's operations or a job requiring a minimum of 20 hours of an employee's time a week for a year in which the employee was hired initially for or transferred to the Alabama facility.

(5) MANUFACTURING FACILITY. An establishment where tangible personal property is produced or assembled.

(6) NEW JOB. A job created in this state at the time a new facility or an expansion is initially staffed. Except as otherwise provided in this subdivision, the term does not include a job created when an employee is shifted from an existing location in this state to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person. The term new job also includes an existing job at a facility of an employer which is reinstated after the employer has rebuilt the facility due to its destruction by accidental fire, natural disaster, or act of God or involuntary conversion as a result of condemnation or exercise of eminent domain by the state or any of its political subdivisions or by the federal government.

(7) PROCESSING FACILITY. An establishment that prepares, treats, or converts tangible personal property into finished goods or another form of tangible personal property.

The term includes a business engaged in processing agricultural, aquacultural, or maricultural products. It does not include an establishment in which retail sales of tangible personal property are made to retail customers.

(8) QUALIFYING SERVICE-RELATED FACILITY. An establishment engaged in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 62, subsectors 621, 622, and 623; or a business, other than a business engaged in legal, accounting, banking, or investment services or retail sales, which has a net increase of at least:

a. Two hundred fifty jobs at a single location.

b. One hundred twenty-five jobs at a single location and the jobs have an average cash compensation level of more than one and one-half times the lower of state per capita income or per capita income in the county where the jobs are located.

c. Seventy-five jobs at a single location and the jobs have an average cash compensation level of more than twice the lower of state per capita income or per capita income in the county where the jobs are located.

d. Thirty jobs at a single location and the jobs have an average cash compensation level of more than two and one-half times the lower of state per capita income or per capita income in the county where the jobs are located.

(9) RESEARCH AND DEVELOPMENT FACILITY. An establishment engaged in laboratory, scientific, or

experimental testing and development related to new products, new uses for existing products, or improving existing products. The term does not include an establishment engaged in efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, banking, or research in connection with literary, historical, or similar projects.

(10) TAXPAYER. A sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity that is subject to Alabama taxes.

(11) TECHNOLOGY INTENSIVE FACILITY. A facility at which a firm engages in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge.

(12) TOURISM FACILITY. An establishment used for a theme park; amusement park; historical, educational, or trade museum; botanical garden; cultural center; theater; motion picture production studio; convention center; arena; auditorium; a spectator or participatory sports facility; and similar establishments where entertainment, education, or recreation is provided to the general public. Tourism facility also includes new hotel and motel construction, except that to qualify for the credits allowed by this section and regardless of the county in which the facility is located, the number of new jobs that must be created by the new hotel or motel is 20 or more. It does not include that portion of an establishment

where retail merchandise or retail services are sold directly to retail customers.

(13) WAREHOUSING FACILITY. An establishment where tangible personal property is stored but does not include any establishment where retail sales of tangible personal property are made to retail customers.

Section 2. (a) Taxpayers that operate a manufacturing, tourism, processing, warehousing, distribution, research and development facility, a corporate office, a qualifying service-related facility, an extraordinary retail establishment; a qualifying technology intensive facility, or a bank as defined pursuant to this act are allowed an annual jobs tax credit as provided in this section. In addition, taxpayers that operate a retail facility or a service-related industry qualify for an annual jobs tax credit in counties designated as least developed or distressed and in counties that are under developed and not traversed by an interstate highway.

(b) The Alabama Department of Economic and Community Affairs shall rank and designate the state's counties by December 31 each year using data from the state Department of Finance and the United States Department of Commerce. The county designations are effective for taxable years that begin in the following calendar year. A county's designation may not be lowered in credit amount more than one tier in the following calendar year. The counties are ranked using the last three completed calendar years of per capita income data and the last 36 months of unemployment rate data that are available on November first, with equal weight given to unemployment rate and per capita income as follows:

(1) The 12 counties with a combination of the highest unemployment rate and lowest per capita income are designated distressed counties. Notwithstanding any other provision of law, no more than 12 counties may be designated or classified as distressed.

(2) The 12 counties with a combination of the next highest unemployment rate and next lowest per capita income are designated underdeveloped counties.

(3) The 11 counties with a combination of the next highest unemployment rate and the next lowest per capita income are designated moderately developed counties.

(4) The 11 counties with a combination of the lowest unemployment rate and the highest per capita income are designated developed counties.

(5) A county, any portion of which is located within 25 miles of the boundaries of an applicable military installation or applicable federal facility shall receive the next increased credit designation for five years beginning with the year in which the military installation or federal facility became an applicable military installation or applicable federal facility with the additional requirement that the military installation must have reduced employment on the installation of at least 3,000 employees.

(b) In addition to the designation in subdivision (5), of subsection (a), a county in which an applicable military installation or applicable federal facility is located is allowed an additional increased credit designation for five years beginning with the year the installation or facility meets the requirements.

(c) In a county where less than five percent of the work force is in manufacturing, the credit allowed is one tier higher than the credit for which the county would otherwise qualify.

(d) For a job created in a county that is not traversed by an interstate highway, the credit allowed is one tier higher than the credit for which jobs created in the county would otherwise qualify. This does not apply to a job created in a county eligible for a higher tier pursuant to another provision of this section.

(e) In a county in which one employer has lost at least 1,500 jobs in a calendar year, the credit allowed is one tier higher than the credit for which the county would otherwise qualify. The one-tier-higher credit allowed by this subsection is allowed for five taxable years for jobs created in 2009, 2010, and 2011. This subsection does not apply to a job created in a county eligible for a higher tier pursuant to another provision of this section.

(f) In a county which is at least 1,000 square miles in size and which has had an unemployment rate greater than the state average for the past 10 years and an average per capita income lower than the average state per capita income for the past ten years, and which is not included in any of the county classifications contained in this subsection, the credit allowed is two tiers higher than the credit for which the county otherwise would qualify.

(g) In a county in which one employer has lost at least 1,500 jobs in calendar year 2009, the credit allowed is three tiers higher than the credit for which the county would otherwise qualify. The three-tier-higher credit allowed by this subsection is allowed for five taxable years for jobs created in 2009 and 2010. This subsection does not apply to a job created in a county eligible for a higher tier pursuant to another provision of this section.

(h) Subject to the conditions provided in subsection (r) of this section, a job tax credit is allowed for five years beginning in year two after the creation of the job for each new full-time job created if the minimum level of new jobs is maintained. The credit is available to taxpayers that increase employment by 10 or more full-time jobs, and no credit is allowed for the year or any subsequent year in which the net employment increase falls below the minimum level of 10. The amount of the initial job credit is as follows:

(1) Eight thousand dollars ($8,000) for each new full-time job created in distressed counties.

(2) Four thousand five hundred dollars ($4,500) for each new full-time job created in least developed counties.

(3) Three thousand five hundred dollars ($3,500) for each new full-time job created in under developed counties.

(4) Two thousand five hundred dollars ($2,500) for each new full-time job created in moderately developed counties.

(5) One thousand five hundred dollars ($1,500) for each new full-time job created in developed counties.

(i) Subject to the conditions provided in subsection (r) of this section, a job tax credit is allowed for five years beginning in year two after the creation of the job for each new full-time job created if the minimum level of new jobs is maintained. The credit is available to taxpayers with 99 or fewer employees that increase employment by two or more full-time jobs, and may be received only if the gross wages of the full-time jobs created pursuant to this section amount to a minimum of 120 percent of the county's or state's average per capita income, whichever is lower. No credit is allowed for the year or any subsequent year in which the net employment increase falls below the minimum level of two. The amount of the initial job credit is as described in subsection (c).

If the taxpayer with 99 or fewer employees increases employment by two or more full-time jobs but the gross wages do not amount to a minimum of 120 percent of the county's or state's average per capita income, whichever is lower, then the amount of the initial job credit is as follows:

(1) Four thousand dollars ($4,000) for each new full-time job created in distressed counties.

(2) Two thousand two hundred fifty dollars ($2,250) for each new full-time job created in least developed counties.

(3) One thousand seven hundred fifty dollars ($1,750) for each new full-time job created in under developed counties.

(4) One thousand two hundred fifty dollars ($1,250) for each new full-time job created in moderately developed counties.

(5) Seven hundred fifty dollars ($750) for each new full-time job created in developed counties.

(j) If the taxpayer qualifying for the new jobs credit under subsection (h) creates additional new full-time jobs in years two through six, the taxpayer may obtain a credit for those new jobs for five years following the year in which the job is created. The amount of the credit for each new full-time job is the same as provided in subsection (h).

(k) The number of new and additional new full-time jobs is determined by comparing the monthly average number of full-time employees subject to Alabama income tax withholding in the applicable county for the taxable year with the monthly average in the prior taxable year. For purposes of calculating the monthly average number of full-time employees in the first year of operation in this state, a taxpayer may use the actual months in operation or a full 12-month period. If a taxpayer's business is in operation for less than 12 months a year, the number of new and additional new full-time jobs is determined using the monthly average for the months the business is in operation.

(1) A taxpayer who makes a capital investment of at least fifty million dollars ($50,000,000) at a single site within a three-year period may elect to have the number of new and additional new full-time jobs determined by comparing the monthly average number of full-time jobs subject to Alabama income tax withholding at the site for the taxable year with the monthly average for the prior taxable year.

(2) The calculation of new and additional jobs provided for in this subsection is allowed for only a five-year period commencing in the year in which the fifty million dollars ($50,000,000) of capital investment is completed.

(l) Except for credits carried forward under subsection (m), the credits available under this section are only allowed for the job level that is maintained in the taxable year that the credit is claimed. If the job level for which a credit was claimed decreases, the five-year period for eligibility for the credit continues to run.

(m) A credit claimed pursuant to this section but not used in a taxable year may be carried forward for 15 years from the taxable year in which the credit is earned by the taxpayer. Credits that are carried forward must be used in the order earned and before jobs credits claimed in the current year.

(n) The merger, consolidation, or reorganization of a taxpayer, where tax attributes survive, does not create new eligibility in a succeeding taxpayer, but unused job tax credits may be transferred and continued by the succeeding taxpayer. In addition, a taxpayer may assign its rights to its jobs tax credit to another taxpayer if it transfers all or substantially all of the assets of the taxpayer or all or substantially all of the assets of a trade or business or operating division of a taxpayer related to the generation of the jobs tax credits to that taxpayer if the required number of new jobs is maintained for that amount of credit. A taxpayer is not allowed a jobs tax credit if the net employment increase for that taxpayer falls below two. The appropriate agency shall determine if qualifying net increases or decreases have occurred and may require reports, adopt rules or promulgate regulations, and hold hearings needed for substantiation and qualification.

(o) For a taxpayer which plans a significant expansion in its labor forces at a location in this state, the appropriate agency shall prescribe certification procedures to ensure that the taxpayer can claim credits in future years even if a particular county is removed from the list of distressed, least developed, under developed, or moderately developed counties.

(p) An S corporation, limited liability company taxed as a partnership, or partnership that qualifies for a credit under this section may pass through the credit earned to each shareholder of the S corporation, partner of the partnership, or member of the limited liability company.

(1) The amount of the credit allowed a shareholder, partner, or member by this subsection is equal to the shareholder's percentage of stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of the credit earned by the entity. This nonrefundable credit is allowed against taxes due, and bank taxes imposed may not exceed 50 percent of the shareholder's, partner's, or member's tax liability or bank tax liability.

(2) Notwithstanding subdivision (1), the credit earned pursuant to this section by an S corporation owing corporate level income tax must be used first at the entity level. Only the remaining credit passes through to each shareholder.

(3) A credit claimed pursuant to this subsection but not used in a taxable year may be carried forward by each shareholder, partner, or member for 15 years from the close of the tax year in which the credit is earned by the S corporation, partnership, or limited liability company. The entity earning the credit may not carry over credit that passes through to its shareholders, partners, or members.

(q) Notwithstanding any other provision of this section, a county with a population under 25,000 as determined by the most recent United States census shall receive the next increased credit designation for purposes of the credit allowed by this section.

(r) Except for employees in distressed counties, the maximum aggregate credit that may be claimed in any tax year for a single employee pursuant to this section is five thousand dollars ($5,000).

Section 3. (a) A taxpayer eligible for the jobs tax credits allowed pursuant to this act may elect to claim the applicable credit in the manner provided pursuant to subsection (b) of this section.

(b) Beginning with the year the new full-time jobs are created, the taxpayer is allowed a jobs tax credit in an amount equal to the credit amount calculated pursuant to this act for not more than five consecutive years. A credit is not allowed for a year in which the new full-time job increase falls below the minimum level of two.

Section 4. (a) For purposes of this section the following words shall have the following meanings:

(1) Infrastructure Project. A project that includes water lines or sewer lines, their related facilities, and roads that:

a. Do not exclusively benefit the taxpayer;

b. Are built to applicable standards; and

c. Are dedicated to public use or, in the case of water and sewer lines and their related facilities in areas served by a private water and sewer company, the water and sewer lines are deeded to a qualified private entity.

(2) Qualified Private Entity. An entity holding the required permits, certifications, and licenses from any other state agencies, departments, or commissions, from which approvals must be obtained in order to operate as a utility furnishing water supply services or sewage collection or treatment services, or both, to the public.

(b) A corporation may claim a credit for the construction or improvement of an infrastructure project against taxes due for any of the following:

(1) Expenses paid or accrued by the taxpayer.

(2) Contributions made to a governmental entity.

(3) Contributions made to a qualified private entity in the case of water or sewer lines and their related facilities in areas served by a private water and sewer company.

(c) For expenses paid or accrued by the taxpayer in building or improving any one infrastructure project the tax credit is:

(1) Equal to 50 percent of the expenses or contribution.

(2) Limited to ten thousand dollars ($10,000) annually.

(d) Any unused credit, up to a total amount of thirty thousand dollars ($30,000), may be carried forward three years.

(e) If an infrastructure project benefits more than the taxpayer, the expenses of the taxpayer must be allocated to the various beneficiaries and only those expenses not allocated to the taxpayer's benefit qualify for the credit.

(f) The credit may be claimed before dedication or conveyance if the taxpayer submits with its tax return a letter of intent signed by the chief operating officer of the appropriate governmental entity or qualified private entity stating that upon completion the governmental entity or qualified private entity shall accept the infrastructure project for the appropriate use.

(g) A qualifying private entity is not allowed the credit provided by this section for expenses it incurs in building or improving facilities it owns, manages, or operates.

(h) If a road qualifying for the credit is subsequently removed from the state highway or public road system, the amount of the credit allowed for the construction of the road must be added to any corporate income tax due from the taxpayer in the first taxable year following the removal of the road from public use. The Department of Revenue may implement the provisions of this subsection by rules.

(i) A corporation which files or is required to file a consolidated return is entitled to the income tax credit allowed by this section on a consolidated basis. The tax credit may be determined on a consolidated basis regardless of whether or not the corporation entitled to the credit contributed to the tax liability of the consolidated group.

(j) The merger, consolidation, or reorganization of a corporation where tax attributes survive does not create new eligibility in a succeeding corporation but unused credits may be transferred and continued by the succeeding corporation. In addition, a corporation may assign its rights to its unused credit to another corporation if it transfers all, or substantially all, of the assets of the corporation or all, or substantially all, of the assets of a trade or business or operating division of a corporation to another corporation.

Section 5. (a) An employer who employs a person who received welfare benefits payments within this state for three months immediately preceding the month the person becomes employed is eligible for an income tax credit of the following:

(1) Twenty percent of the wages paid to the employee for each full month of employment for the first 12 months of employment.

(2) Fifteen percent of the wages paid to the employee for each full month of employment during the second 12 months of employment.

(3) Ten percent of the wages paid to the employee for each full month during the third 12 months of employment.

(b) Except for employees employed in distressed counties, the maximum aggregate credit that may be claimed in a tax year for a single employee is five thousand five hundred dollars ($5,500).

(c) In addition to the credits provided for in subsection (a), and this act, an employer who employs a person who received welfare benefits payments within this state for three months immediately preceding the month the person becomes employed and employs that person to work full time in a distressed county or a least developed county, is allowed a credit in an amount equal to one hundred seventy-five dollars ($175) for each full month during the first 36 months of employment.

(d) In order to claim the credit provided in subsection (a), an employer must make health insurance available to the qualified employee. All conditions including employer contributions and employer imposed waiting periods for the qualified employee must be on the same basis and under the same conditions as that of any other employee employed by the employer claiming the credit. The credit is allowed from the date of hire for each full month of employment notwithstanding an employer imposed waiting period which must not exceed 12 months.

(e) Nothing in this section may be construed to require employers to pay for all or part of any health insurance coverage for a qualified employee in order to claim the credit if an employer does not pay for all or part of health insurance coverage for his other employees.

(f) The Department of Human Resources must make information available to employers interested in hiring full-time recipients. An employer shall submit an employee release and shall request in writing certification of full-time eligibility from the Department of Human Resources by the fifteenth day of the first month after the end of the taxable year in which the employer hires the welfare recipient. The department has 30 days from the date the employer submits the employee release and request in which to approve or deny in writing certification of welfare eligibility.

(g) No income tax credit provided for in subsection (a) may be taken under this section if the position filled by the recipient was made available due to the termination or forced resignation of an employee for the purpose of obtaining the tax credit. Nothing in this section creates a private cause of action which does not otherwise exist at law.

(h) A credit claimed under this section but not used in a taxable year may be carried forward 15 years from the taxable year in which the credit is earned.

Section 6. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.