

1 SB283  
2 116520-3  
3 By Senators Butler, Orr, Mitchem, Barron, and Bedford  
4 RFD: Finance and Taxation General Fund  
5 First Read: 19-JAN-10

1 SB283

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4 ENROLLED, An Act,

5 To create the Enhanced Use Lease Area Act of 2010;  
6 to amend Sections 11-99-1, 11-99-2, 11-99-4, 11-99-5, 11-99-6,  
7 11-99-10, and 40-18-70, Code of Alabama 1975, and to add  
8 Chapter 9E to Title 40, Code of Alabama 1975; to make  
9 legislative findings and define terms; to provide for the  
10 utilization of underutilized real and personal property  
11 located in enhanced use lease areas and funding the costs  
12 thereof through tax increment financing; to entitle certain  
13 qualified property within a tax increment district in which  
14 not less than 50 percent, by area, of the real property within  
15 the tax increment district is an enhanced use lease area, to  
16 an abatement of state property taxes; to provide that in lieu  
17 of paying state property taxes, the taxable owner of certain  
18 qualified property must make a payment to the public entity  
19 which created the tax increment district in which the  
20 qualified property is located and that this payment to the  
21 public entity would be used to pay for project costs and to  
22 repay tax increment obligations issued to fund project costs;  
23 to ensure that withholding amounts for wages paid to certain  
24 construction workers are reported and paid to the state; and

1 to provide an effective date, including retroactive effect for  
2 certain districts created on or after January 1, 2010.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known and may be cited  
5 as the Enhanced Use Lease Area Act of 2010.

6 Section 2. The Legislature makes the following  
7 findings:

8 (1) It is in the best interest of the state to  
9 ensure the continued location and expansion of military  
10 installations in this state.

11 (2) The presence and expansion of military  
12 installations in this state enhance the public benefit and  
13 welfare by, among other things, promoting local economic  
14 development and the stimulus of the local economy, increasing  
15 job opportunities, creating additional tax revenues and  
16 enhancing the public's overall quality of life.

17 (3) Growth to municipalities and counties of the  
18 state as a result of the presence and expansion of military  
19 installations requires additional capital and improved and  
20 expanded infrastructure, and the provision of such capital and  
21 infrastructure constitutes an important public purpose.

22 Section 3. Sections 11-99-1, 11-99-2, 11-99-4,  
23 11-99-5, 11-99-6, 11-99-10, and 40-18-70, Code of Alabama  
24 1975, are amended to read as follows:

25 "§11-99-1.

1           "(a) It is hereby found and declared that there  
2 exist in municipalities and counties of the state blighted or  
3 economically distressed areas which constitute a serious and  
4 growing problem, injurious to the public health, safety,  
5 morals, and welfare of the residents of the state; that the  
6 existence of such areas contributes substantially and  
7 increasingly to the spread of disease and crime, constitutes  
8 an economic and social liability imposing onerous burdens  
9 which decrease the tax base and reduce tax revenues,  
10 substantially impairs or arrests sound growth, retards the  
11 provision of housing accommodations, aggravates traffic  
12 problems, and substantially hampers the elimination of traffic  
13 hazards and the improvement of traffic facilities; and that  
14 the prevention and elimination of slums and blighted areas and  
15 economically distressed areas is a matter of state policy and  
16 state concern in order that the state and its municipalities  
17 and counties shall not continue to be endangered by areas  
18 which are focal centers of disease, promote juvenile  
19 delinquency, and consume an excessive proportion of public  
20 revenues because of the extra services required for police,  
21 fire, accident, hospitalization, and other forms of public  
22 protection, services, and facilities.

23           "(b) It is further found and declared that certain  
24 blighted and economically distressed areas or portions thereof  
25 may require acquisition, clearance, and disposition subject to

1 use restrictions, as provided in this chapter, since the  
2 prevailing condition of blight and economic distress may make  
3 impracticable the reclamation of the area by conservation or  
4 rehabilitation; that other areas or portions thereof may,  
5 through the means provided in this chapter, be susceptible of  
6 conservation or rehabilitation in such a manner that the  
7 conditions and evils enumerated may be eliminated, remedied,  
8 or prevented; and that salvageable blighted and economically  
9 distressed areas can be conserved and rehabilitated through  
10 appropriate public action as herein authorized and the  
11 cooperation and voluntary action of the owners and tenants of  
12 property in such areas.

13 "(c) It is further found and declared that there  
14 exist in municipalities and counties of the state  
15 underutilized real and personal property in enhanced use lease  
16 areas which, when leased by a secretary of a military  
17 department for cash or in-kind consideration, enhances the  
18 public benefit and welfare by, among other things, promoting  
19 local economic development and the stimulation of the local  
20 economy, increasing job opportunities, creating additional tax  
21 revenues and enhancing the public's overall quality of life.

22 "(d) It is further found and declared that the  
23 powers conferred by this chapter are for public uses and  
24 purposes for which public money may be expended and the power  
25 of eminent domain and police power exercised, and the

1 necessity in the public interest for the provisions herein  
2 enacted is hereby declared as a matter of legislative  
3 determination.

4 "§11-99-2.

5 "As used in this chapter:

6 "(1) BLIGHTED OR ECONOMICALLY DISTRESSED AREA:

7 "a. An area in which the structures, buildings, or  
8 improvements, by reason of dilapidation, deterioration, age,  
9 or obsolescence, inadequate provision for ventilation, light,  
10 air, sanitation, or open spaces, high density of population  
11 and overcrowding, or the existence of conditions which  
12 endanger life or property by fire and other causes, or any  
13 combination of such factors, are conducive to ill health,  
14 transmission of disease, infant mortality, juvenile  
15 delinquency, or crime, and are detrimental to the public  
16 health, safety, morals, or welfare, or

17 "b. Any area which by reason of the presence of a  
18 substantial number of substandard, slum, deteriorated, or  
19 deteriorating structures, predominance of defective or  
20 inadequate street layout, faulty lot layout in relation to  
21 size, adequacy, accessibility, or usefulness, unsanitary or  
22 unsafe conditions, deterioration of site or other  
23 improvements, diversity of ownership, tax or special  
24 assessment delinquencies exceeding the fair value of the land,  
25 defective or unusual conditions of title, or the existence of

1 conditions which endanger life or property by fire and other  
2 causes, or any combination of the foregoing, substantially  
3 impairs or arrests the sound economic growth of an area,  
4 retards the provision of housing accommodations, or  
5 constitutes an economic or social liability and is a detriment  
6 to the public health, safety, morals, or welfare in its  
7 present condition and use, or

8 "c. Any area which is predominantly open and which  
9 because of obsolete platting, diversity of ownership,  
10 deterioration of structures or of site improvements, or  
11 otherwise, substantially impairs or arrests the sound economic  
12 growth of an area, or

13 "d. Any area which the local governing body  
14 certifies is in need of redevelopment or rehabilitation as a  
15 result of flood, fire, hurricane, tornado, earthquake, storm,  
16 or other catastrophe respecting which the Governor of the  
17 state has certified the need for disaster assistance under  
18 federal law, or

19 "e. Any area containing excessive vacant land on  
20 which structures were previously located, or on which are  
21 located abandoned or vacant buildings or old buildings, or  
22 where excessive vacancies exist in existing buildings, or  
23 which contains substandard structures, or with respect to  
24 which there exist delinquencies in payment of real property  
25 taxes.

1           "(2) DEFERRED TAX RECIPIENT. Each taxing authority  
2 which receives ad valorem taxes with respect to property  
3 located in a proposed tax increment district.

4           "(3) ENHANCED USE LEASE AREA. Any area of a military  
5 installation which contains underutilized real or personal  
6 property, or both, that is leased by a secretary of a military  
7 department to a lessee pursuant to the authority provided in  
8 Title 10 U.S.C. §2667.

9           "(4) LOCAL FINANCE OFFICER. The legally authorized  
10 officer or agent responsible for receipt and disbursement of  
11 the revenues of a taxing authority.

12           "(5) LOCAL GOVERNING BODY. The governing body of a  
13 county or municipality which proposes to create or has created  
14 a tax increment district.

15           "(6) MUNICIPALITY. Any incorporated municipality in  
16 this state.

17           "(7) PROJECT. Undertakings and activities of a  
18 public entity in a tax increment district for either (i) the  
19 elimination and prevention of the development or spread of  
20 blight in a blighted or economically distressed area or (ii)  
21 the utilization of underutilized real or personal property, or  
22 both, in an enhanced use lease area, and may include property  
23 acquisition, property clearance, development, redevelopment,  
24 rehabilitation, or conservation or a combination or part  
25 thereof in accordance with a project plan.



1           "(8) PROJECT COSTS. Any expenditures made or  
2           estimated to be made or monetary obligations incurred or  
3           estimated to be incurred by a public entity which are listed  
4           in a project plan as costs of public works or improvements  
5           within a tax increment district, plus any costs incidental  
6           thereto, diminished by any special assessments, received or  
7           reasonably expected to be received by the public entity in  
8           connection with the implementation of the project plan.

9           Project costs include, but are not limited to:

10           "a. Capital costs, including the costs of the  
11           construction of public works or improvements, new buildings,  
12           structures, and fixtures, the demolition, alteration,  
13           remodeling, repair or reconstruction of existing buildings,  
14           structures, and fixtures, the acquisition of equipment, the  
15           acquisition, clearing, and grading of land and the acquisition  
16           of interests in land;

17           "b. Financing costs, including all interest paid to  
18           holders of tax increment obligations during the period of  
19           implementation of the project plan, the costs of any form of  
20           credit enhancement, printing and trustee costs, and any  
21           premium paid in excess of the principal amount thereof because  
22           of the redemption of such obligations prior to maturity;

23           "c. Real property assembly costs, meaning any  
24           deficit resulting from the sale or lease as lessor by the  
25           public entity of real or personal property within a tax

1 increment district for consideration which is less than its  
2 cost to the public entity;

3 "d. Professional service costs, including those  
4 costs incurred for architectural, planning, engineering,  
5 fiscal, underwriting, and legal advice and services;

6 "e. Imputed administrative costs, including  
7 reasonable charges for the time spent by officers and  
8 employees of the public entity in connection with the  
9 implementation of a project plan;

10 "f. Relocation costs, including those relocation  
11 payments made following condemnation under Chapter 1A of Title  
12 18;

13 "g. Organizational costs, including the costs of  
14 conducting environmental impact and other studies and the  
15 costs of informing the public with respect to the creation of  
16 tax increment districts and the implementation of project  
17 plans;

18 "h. The amount of any contributions made in  
19 connection with the implementation of the project plan that  
20 are within limits prescribed by law;

21 "i. Payments made, at the discretion of the local  
22 governing body, which are to be necessary or convenient to the  
23 creation of tax increment districts or the implementation of  
24 project plans; and

1            "j. For purposes of any tax increment district in  
2            which not less than 50 percent, by area, of the real property  
3            within the tax increment district is an enhanced use lease  
4            area, "project costs" shall also include all costs described  
5            in this subdivision which are expended by a public entity or a  
6            developer within three years immediately preceding the date of  
7            the creation of such tax increment district.

8            "(9) PROJECT PLAN. The properly approved plan for  
9            the development or redevelopment of a tax increment district,  
10           including all properly approved amendments thereto.

11           "(10) PUBLIC ENTITY. Any municipality or county in  
12           the state.

13           "(11) TAX INCREMENT. That amount obtained by  
14           multiplying the total revenue derived from ad valorem taxes  
15           levied by all local taxing authorities on all taxable property  
16           within a tax increment district in any tax year by a fraction  
17           having a numerator equal to that tax year's market value of  
18           all taxable property in the district minus the tax increment  
19           base and a denominator equal to that tax year's equalized  
20           value of all taxable property in the district. In any tax  
21           year, a tax increment is "positive" if the tax increment base  
22           is less than the aggregate value of taxable property as  
23           equalized by the Department of Revenue; it is "negative" if  
24           the base exceeds such value.

1           "(12) TAX INCREMENT BASE. The aggregate value, as  
2 equalized by the Department of Revenue, of all taxable  
3 property located within a tax increment district on the date  
4 the district is created, determined as provided in Section  
5 11-99-5 hereof.

6           "(13) TAX INCREMENT DISTRICT. A contiguous  
7 geographic area within the boundaries of a public entity  
8 defined and created by resolution of the local governing body.

9           "(14) TAX INCREMENT FUND. A fund into which all tax  
10 increments not retained by a taxing authority as provided by  
11 Section 11-99-10(b) hereof are paid, and from which money is  
12 disbursed to satisfy claims of holders of tax increment  
13 obligations issued for the tax increment district.

14           "(15) TAX INCREMENT OBLIGATIONS. Bonds, warrants,  
15 notes, or other evidences of indebtedness issued by a public  
16 entity to fund all or any project costs.

17           "(16) TAXABLE PROPERTY. All real and personal  
18 property located in a tax increment district which is subject  
19 to ad valorem taxation on the date of adoption of the  
20 resolution creating the tax increment district.

21           "(17) TAXING AUTHORITY.

22           "a. For tax increment districts in which not less  
23 than 50 percent, by area, of the real property within the tax  
24 increment district is a blighted or economically distressed  
25 area, "taxing authority" means any municipality, county, or

1 other taxing authority which has the power to levy taxes on  
2 property within the tax increment districts.

3 "b. For tax increment districts in which not less  
4 than 50 percent, by area, of the real property within the tax  
5 increment district is an enhanced use lease area, "taxing  
6 authority" means the state or any municipality, county, or  
7 other taxing authority which has the power to levy taxes on  
8 property within the tax increment district.

9 "§11-99-4.

10 "In order to exercise its powers under this chapter,  
11 a public entity shall take the following steps:

12 "(1) The local governing body shall hold a public  
13 hearing at which all interested parties are afforded a  
14 reasonable opportunity to express their views on the concept  
15 of tax increment financing, on the proposed creation of a tax  
16 increment district and its proposed boundaries, and its  
17 benefits to the public entity. Notice of the hearing shall be  
18 published in a newspaper of general circulation in either the  
19 county or in the city, as the case may be, in which the  
20 proposed tax increment district is to be located with such  
21 notice to be published at least twice in the 15-day period  
22 immediately preceding the date of the hearing. Prior to  
23 publication, a copy of the notice shall be sent by first class  
24 mail to the chief executive officer of each deferred tax  
25 recipient.

1           "(2) In addition to the notice required by  
2 subdivision (1) of this section, and either before or after  
3 such hearing, the local governing body shall make a written  
4 submission to the governing body of each deferred tax  
5 recipient. The submission shall include a description of the  
6 proposed boundaries of the tax increment district, the  
7 tentative plans for the development or redevelopment of the  
8 tax increment district, and an estimate of the general impact  
9 of the proposed project plan on property values and tax  
10 revenues. Not later than the fifteenth day after the date on  
11 which the notice required by subdivision (1) of this section  
12 is mailed, each deferred tax recipient shall designate a  
13 representative empowered to meet with the local governing body  
14 to discuss the project plan and the tax increment financing  
15 and shall notify the local governing body of its designation.  
16 Failure of any deferred tax recipient to designate a  
17 representative within the 15-day period, or to notify the  
18 local governing body of its designation, shall not prevent the  
19 local governing body from proceeding hereunder. If a deferred  
20 tax recipient which has failed to so designate a  
21 representative shall thereafter designate a representative and  
22 shall notify the local governing body of such designation,  
23 such representative shall be entitled to notice of any  
24 meetings held thereafter pursuant to this section, and shall  
25 be entitled to attend such meetings, but shall have no right

1 to have matters discussed again which have already been  
2 discussed. The local governing body shall call a meeting, or  
3 meetings, of the representatives of the deferred tax  
4 recipients to be held at any time after 20 days from the  
5 mailing notice referred to in subdivision (1) of this section.  
6 Each representative shall be notified of each meeting at least  
7 three days before it is to be held, but such notice may be  
8 waived. At the meetings the local governing body and the  
9 representatives of the deferred tax recipients may discuss the  
10 boundaries of the tax increment district, development within  
11 such district, the exclusion of particular parcels of property  
12 from such district, and tax collection for such district. On  
13 the motion of the local governing body any other matter  
14 relevant to the proposed tax increment district may be  
15 discussed.

16 "(3) The local governing body shall adopt a  
17 resolution (which need not be published) which:

18 "a. Describes the boundaries of the tax increment  
19 district with sufficient definiteness to identify with  
20 ordinary and reasonable certainty the territory included,  
21 which shall include only those whole units of property (other  
22 than publicly owned property such as streets, easements, and  
23 rights-of-ways) assessed for general property tax purposes  
24 and, if the public entity is a county, which shall include  
25 only those areas which lie outside the corporate limits of any

1 municipality, unless the governing body of a municipality has  
2 consented to the inclusion of land within its corporate limits  
3 within a tax increment district formed by a county;

4 "b. Creates the tax increment district as of a given  
5 date after the date of adoption of the resolution, and fixes  
6 the period for its duration, which may be for a period not to  
7 exceed 30 years in the case of a tax increment district in  
8 which not less than 50 percent, by area, of the real property  
9 within the tax increment district is a blighted or  
10 economically distressed area, and which may be for a period  
11 not to exceed 35 years in the case of a tax increment district  
12 in which not less than 50 percent, by area, of the real  
13 property within the tax increment district is an enhanced use  
14 lease area, unless an amendment is made to the project plan  
15 under subdivision (7) of this section;

16 "c. Assigns a name to the tax increment district for  
17 identification purposes, such as "tax increment district  
18 number one";

19 "d. Contains findings (which shall not be subject to  
20 review except after a showing of fraud, corruption, or undue  
21 influence) that:

22 "1. Not less than 50 percent, by area, of the real  
23 property within the tax increment district is either (i) a  
24 blighted area and is in need of rehabilitation or conservation  
25 work or (ii) an enhanced use lease area; and



1           "2. The aggregate value of equalized taxable  
2 property in the district plus all existing districts created  
3 by the public entity does not exceed 10 percent of the total  
4 value of equalized taxable property within the public entity  
5 or 50 percent if the public entity is a Class 3 municipality.  
6 Provided, however, that equalized taxable property located  
7 within the boundaries of a military reservation, jurisdiction  
8 over which has been ceded to the United States pursuant to  
9 Section 42-3-1, shall be excluded from aggregated value.

10           "(4) The local governmental body shall prepare and  
11 adopt a project plan for each tax increment district. The plan  
12 shall include a statement listing the kind, number, and  
13 location of all proposed public works or improvements within  
14 the district; a detailed list of estimated project costs; and  
15 a description of the methods of financing all estimated  
16 project cost and the time when related costs or monetary  
17 obligations are to be incurred. For purposes of this chapter,  
18 any work or improvement for a military installation and  
19 located within an enhanced use lease area shall be deemed to  
20 be for public uses and purposes. The project plan shall also  
21 include: A map showing existing uses and condition of real  
22 property in the district; a map showing proposed improvements  
23 and uses therein; proposed changes of zoning, master map plan,  
24 building code, and other ordinances or resolutions affecting  
25 the district; a list of estimated nonproject costs; and a

1 proposed plan for the relocation of families, persons, and  
2 businesses to be temporarily or permanently displaced from  
3 housing or commercial facilities in the district by  
4 implementation of the plan.

5 "(5) The local governing body shall certify before  
6 approving the project plan that:

7 "a. The proposed tax increment district on the whole  
8 has not been subject to growth and development through  
9 investment by private enterprise and it is not reasonable to  
10 anticipate that the land in the district will be developed  
11 without the adoption of the project plan;

12 "b. A feasible method exists for the relocation and  
13 compensation of individuals, families, and businesses that  
14 will be displaced by the project in decent, safe, and sanitary  
15 accommodations within their means and without undue hardship  
16 to such individuals, families, and businesses;

17 "c. The plan conforms to the applicable master plan  
18 of the local entity (if there is one); and

19 "d. The plan will afford maximum opportunity,  
20 consistent with the sound needs of the public entity as a  
21 whole, for the rehabilitation or redevelopment of the tax  
22 increment district by private enterprise.

23 "(6) A copy of the project plan shall be mailed to  
24 the governing body of each deferred tax recipient, before  
25 approval of the project plan.

1           "(7) The local governing body may at any time adopt  
2 an amendment to a project plan by complying with the  
3 procedures for the original adoption of a project plan.

4           "§11-99-5.

5           "(a) Upon the creation of a tax increment district  
6 or adoption of any amendment pursuant to subsection (c) of  
7 this section, the tax increment base shall be determined.

8           "(b) Upon application in writing by the local  
9 finance officer, the tax assessor (or the officer of the  
10 county performing the duties of a tax assessor) for each  
11 county in which any part of the district is located shall  
12 determine according to his or her best judgment from all  
13 sources available to him or her the full aggregate value of  
14 the taxable property in the district located in that county.  
15 The aggregate valuation from all such tax assessors or other  
16 such public officials, upon certification to the local finance  
17 officer, shall constitute the tax increment base of the  
18 district.

19           "(c) If the public entity creating a tax increment  
20 district in which not less than 50 percent, by area, of the  
21 real property within the tax increment district is a blighted  
22 or economically distressed area adopts an amendment to the  
23 original project plan for such district which includes  
24 additional project costs for which tax increments may be  
25 received by such public entity, the tax increment base for the

1 district shall be redetermined pursuant to subsection (b) of  
2 this section as of 90 days following the effective date of the  
3 amendment, except that if the effective date of the amendment  
4 is October 1 of any year, the redetermination shall be made on  
5 that date. The tax increment base as redetermined under this  
6 subsection shall be effective for the purposes of this chapter  
7 only if it exceeds the original tax increment base determined  
8 under subsection (b) of this section.

9 "(d) If the public entity creating a tax increment  
10 district in which not less than 50 percent, by area, of the  
11 real property within the tax increment district is an enhanced  
12 use lease area adopts an amendment to the original project  
13 plan for such district which includes additional project costs  
14 for which tax increments may be received by such public entity  
15 or an expansion of the tax increment district, the tax  
16 increment base for the district shall not be redetermined.

17 "(e) There shall be a rebuttable presumption that  
18 any property within a tax increment district acquired or  
19 leased as lessee by the public entity or any agency or  
20 instrumentality thereof within one year immediately preceding  
21 the date of the creation of the district was so acquired or  
22 leased in contemplation of the creation of the district. The  
23 presumption may be rebutted by the public entity with proof  
24 that the property was so leased or acquired primarily for a  
25 purpose other than to reduce the tax increment base. If the

1 presumption is not rebutted, in determining the tax increment  
2 base of the district, but for no other purpose, the taxable  
3 status of such property shall be determined as though such  
4 lease or acquisition had not occurred.

5 "(f) The local tax assessor or person performing his  
6 or her duties shall identify upon the tax records prepared by  
7 him or her under Chapter 7 of Title 40 those parcels of  
8 property which are within each existing tax increment  
9 district, specifying the name of each district. A similar  
10 notation shall also appear on the tax records made by the  
11 local finance officer.

12 "(g) The Department of Revenue shall annually give  
13 notice to the designated finance officer of all taxing  
14 authorities levying taxes on property within each district as  
15 to both the assessed and equalized value of the property and  
16 the assessed and equalized value of the tax increment base.  
17 The notice shall state that the taxes collected in excess of  
18 the base will be paid to the public entity.

19 "§11-99-6.

20 "(a) Positive tax increments of a tax increment  
21 district shall be allocated and paid over to the public entity  
22 which created the district for each year commencing on the  
23 October 1 following the date when the district is created  
24 until the earlier of:

1           "(1) That time, after the completion of all public  
2 improvements specified in the project plan or amendments  
3 thereto, when the public entity has received aggregate tax  
4 increments from the district in an amount equal to the  
5 aggregate of all expenditures previously made or monetary  
6 obligations previously incurred for project costs for the  
7 district; or

8           "(2) Thirty-five years after the last expenditure  
9 identified in the project plan is made. No expenditure may be  
10 provided for in the project plan to be made more than five  
11 years after the district is created, except in Class 3  
12 municipalities where such expenditures may be made not more  
13 than 10 years thereafter if so provided and in tax increment  
14 districts in which not less than 50 percent, by area, of the  
15 real property within the tax increment district is an enhanced  
16 use lease area where such expenditures may be made not more  
17 than 15 years thereafter if so provided, unless an amendment  
18 is adopted by the local governing body under subdivision (7)  
19 of Section 11-99-4.

20           "(b) Notwithstanding any other provision of law,  
21 every officer charged by law to collect and pay over or retain  
22 local general property taxes in the case of a tax increment  
23 district in which not less than 50 percent, by area, of the  
24 real property within the tax increment district is a blighted  
25 or economically distressed area, or state and local general

1 property taxes in the case of a tax increment district in  
2 which not less than 50 percent, by area, of the real property  
3 within the tax increment district is an enhanced use lease  
4 area, shall first, on the next settlement date provided by  
5 law, pay over to the local finance officer out of all such  
6 taxes which have been collected that portion which represents  
7 a tax increment allocable to a tax increment district,  
8 identifying the amount for each district.

9 "(c) All tax increments received for a tax increment  
10 district shall, upon receipt by the local finance officer, be  
11 deposited into the tax increment fund for that district. The  
12 local finance officer may deposit additional moneys into the  
13 fund pursuant to an appropriation by the local governing body.  
14 Moneys shall be paid out of the fund only to reimburse the  
15 public entity for payments theretofore made by it for  
16 principal of or interest on tax increment obligations for that  
17 district if such obligations are general obligations of the  
18 public entity, or to satisfy claims of holders of tax  
19 increment obligations issued for that district. Subject to any  
20 agreement with security holders, moneys in the fund may be  
21 temporarily invested in the same manner as other surplus funds  
22 of the public entity. After the principal of and interest on  
23 all tax increment obligations of the district have been paid  
24 or provided for, subject to any agreement with security  
25 holders, if there remain in the fund any moneys, they shall be

1 paid over to the chief finance officer of the state, each  
2 county, each municipality, each school district, and to the  
3 general fund of the public entity in such amounts as are due  
4 to each respectively, having due regard for what portion of  
5 such moneys, if any, represents tax increments not allocated  
6 to the public entity and what portion thereof, if any,  
7 represents voluntary deposits of the public entity into the  
8 fund.

9 "§11-99-10.

10 "(a) With respect to any taxing authority other than  
11 the public entity which created the tax increment district,  
12 the calculation of the equalized valuation of taxable property  
13 in a tax increment district may not exceed the tax increment  
14 base of the district until the district is terminated, unless  
15 agreement has been made for other arrangements under  
16 subsection (b) of this section.

17 "(b) In such cases where it can be shown that losing  
18 tax increments would be harmful to any given taxing authority  
19 or cause such taxing authority not to honor a prior binding  
20 commitment, by contract executed with the public entity prior  
21 to the designation of the tax increment district, and if an  
22 agreement has been made for such allowances through a process  
23 of negotiation at the time of the creation of the tax  
24 increment district, a taxing authority may make payments into  
25 the tax increment fund, less the sum of:



1           "(1) Any property taxes produced from the tax  
2 increments which are required to be paid by the taxing  
3 authority to another political subdivision; and

4           "(2) A portion, not to exceed 20 percent or a  
5 one-time payment mutually agreed upon at the time of the  
6 creation of the tax increment district, of the tax increment  
7 produced in the district by the taxes levied on behalf of that  
8 taxing authority.

9           "(c) All tax increments which have accrued with  
10 respect to school districts under this chapter shall be  
11 determined and the amounts shall be paid on February 1 of each  
12 year out of the taxes of all school districts which have  
13 territory in a tax increment district.

14           "(d) The use of the increased valuations in the tax  
15 increment district before the completion of the project in  
16 calculating any general state school aid formula is  
17 prohibited.

18           "(e) A taxing authority is not required to pay a tax  
19 increment into the tax increment fund for a district beyond  
20 three years from the date the district was created unless one  
21 or more of the following conditions exist or have been met:

22           "(1) Tax increment obligations have been issued for  
23 the district;

24           "(2) The public entity has acquired property within  
25 the district pursuant to the project plan; or

1           "(3) Construction of improvements pursuant to the  
2 project plan has commenced in the district.

3           "§40-18-70.

4           "For the purpose of this article, the following  
5 terms shall have the respective meanings ascribed by this  
6 section:

7           "(1) EMPLOYEE. "Employee" as defined in the Internal  
8 Revenue Code, as amended from time to time.

9           "(2) EMPLOYER. "Employer" as defined in the Internal  
10 Revenue Code, as amended from time to time. An employer is  
11 required to withhold tax from the wages of employees to the  
12 extent that such wages are earned in Alabama, whether the  
13 employee is a resident or a nonresident of the state.

14           "(3) INTERNAL REVENUE CODE. The Internal Revenue  
15 Code of the United States, as amended from time to time.

16           "(4) PROVISIONAL CONSTRUCTION EMPLOYERS. A  
17 provisional construction employer is any employer, including  
18 members of its affiliated group as that term is defined in the  
19 Internal Revenue Code, that (i) employs 50 or more employees  
20 in a construction project for qualified property located in a  
21 tax increment district in which not less than 50 percent, by  
22 area, of the real property within the tax increment district  
23 is an enhanced use lease area, as these terms are defined in  
24 Section 40-9E-1, a construction project for a qualifying  
25 industrial or research enterprise described in Section

1 40-9B-3(a)(8)e, or a construction project, the cost of which  
2 is part of a qualifying entity's capital cost, as these terms  
3 are defined in Section 40-9D-3, and (ii) has not registered in  
4 the tax year preceding the current tax year with the Alabama  
5 Department of Revenue for withholding tax purposes. If the  
6 provisional construction employer reports and pays all past  
7 withholding taxes due the state and continues to report and  
8 pay for a one-year period all withholding taxes due to  
9 Alabama, the employer will no longer be deemed to be a  
10 provisional construction employer.

11 "(5) WAGES. "Wages" as defined in the Internal  
12 Revenue Code, as amended from time to time. However, Alabama  
13 does differentiate from federal requirements for certain  
14 classes and amounts pursuant to departmental rules adopted via  
15 the procedures in Title 41."

16 Section 4. The following new Chapter 9E, comprised  
17 of Sections 40-9E-1 and 40-9E-2, is added to Title 40 of the  
18 Code of Alabama 1975, to read as follows:

19 CHAPTER 9E. STATE PROPERTY TAX IN TAX INCREMENT  
20 DISTRICTS

21 §40-9E-1.

22 For purposes of this chapter only, the following  
23 terms shall have the following meanings:

1           (1) BASE YEAR. The taxable year immediately before  
2 the taxable year in which property first becomes qualified  
3 property under this section.

4           (2) BASE YEAR VALUE. The value of the property used  
5 to determine the assessment on which the property tax on  
6 property is imposed for the base year. "Base year value" does  
7 not include any new property that is first assessed in the  
8 base year.

9           (3) ELIGIBLE ASSESSMENT. The difference between the  
10 base year value and the actual value as determined by the  
11 county tax assessor for the applicable taxable year.

12           (4) ENHANCED USE LEASE AREA. Any area of a military  
13 installation which contains underutilized real or personal  
14 property, or both, that is leased by a secretary of a military  
15 department to a lessee pursuant to the authority provided in  
16 Title 10 U.S.C. §2667.

17           (5) LOCAL GOVERNING BODY. The governing body of a  
18 county or municipality which proposes to create or has created  
19 a tax increment district.

20           (6) PROJECT COSTS. Any expenditures made or  
21 estimated to be made or monetary obligations incurred or  
22 estimated to be incurred by a public entity which are listed  
23 in a project plan as costs of public works or improvements  
24 within a tax increment district, plus any costs incidental  
25 thereto, diminished by any special assessments received or

1 reasonably expected to be received by the public entity in  
2 connection with the implementation of the project plan.

3 Project costs include, but are not limited to:

4 a. Capital costs, including the costs of the  
5 construction of public works or improvements, new buildings,  
6 structures, and fixtures, the demolition, alteration,  
7 remodeling, repair or reconstruction of existing buildings,  
8 structures, and fixtures, the acquisition of equipment, the  
9 acquisition, clearing, and grading of land and the acquisition  
10 of interests in land;

11 b. Financing costs, including all interest paid to  
12 holders of tax increment obligations during the period of  
13 implementation of the project plan, the costs of any form of  
14 credit enhancement, printing and trustee costs, and any  
15 premium paid in excess of the principal amount thereof because  
16 of the redemption of such obligations prior to maturity;

17 c. Real property assembly costs, meaning any deficit  
18 resulting from the sale or lease as lessor by the public  
19 entity of real or personal property within a tax increment  
20 district for consideration which is less than its cost to the  
21 public entity;

22 d. Professional service costs, including those costs  
23 incurred for architectural, planning, engineering, fiscal,  
24 underwriting, and legal advice and services;

1           e. Imputed administrative costs, including  
2 reasonable charges for the time spent by officers and  
3 employees of the public entity in connection with the  
4 implementation of a project plan;

5           f. Relocation costs, including those relocation  
6 payments made following condemnation under Chapter 1A of Title  
7 18;

8           g. Organizational costs, including the costs of  
9 conducting environmental impact and other studies and the  
10 costs of informing the public with respect to the creation of  
11 tax increment districts and the implementation of project  
12 plans;

13           h. The amount of any contributions made in  
14 connection with the implementation of the project plan that  
15 are within limits prescribed by law;

16           i. Payments made, at the discretion of the local  
17 governing body, which are to be necessary or convenient to the  
18 creation of tax increment districts or the implementation of  
19 project plans; and

20           j. For purposes of any tax increment district in  
21 which not less than 50 percent, by area, of the real property  
22 within the tax increment district is an enhanced use lease  
23 area, "project costs" shall also include all costs described  
24 in this subdivision which are expended within three years

1 immediately preceding the date of the creation of such tax  
2 increment district.

3 (7) PROJECT PLAN. The properly approved plan for the  
4 development or redevelopment of a tax increment district,  
5 including all properly approved amendments thereto.

6 (8) PUBLIC ENTITY. Any municipality or county in the  
7 state.

8 (9) QUALIFIED PROPERTY. Real property that is  
9 located in a tax increment district in which not less than 50  
10 percent, by area, of the real property within the tax  
11 increment district is an enhanced use lease area.

12 (10) STATE PROPERTY TAX INCREMENT. The state  
13 property taxes attributable to the eligible assessment of  
14 qualified property.

15 (11) TAX INCREMENT DISTRICT. A contiguous geographic  
16 area within the boundaries of a public entity defined and  
17 created by resolution of the local governing body.

18 (12) TAX INCREMENT OBLIGATIONS. Bonds, warrants,  
19 notes, or other evidences of indebtedness issued by a public  
20 entity to fund all or any project costs.

21 §40-9E-2.

22 (a) Notwithstanding any other law of this state,  
23 qualified property shall be entitled to an abatement of state  
24 property taxes provided the conditions of this section are  
25 satisfied.

1           (b) In lieu of paying the state property tax  
2 increment on qualified property, any owner of qualified  
3 property not exempt from ad valorem taxation must pay the  
4 state property tax increment on such qualified property to the  
5 public entity that created the tax increment district in which  
6 the qualified property is located for each year commencing on  
7 the October 1 following the date when property first becomes  
8 qualified property under this chapter, and each October 1  
9 thereafter, until the tax increment district in which such  
10 qualified property is located is terminated in accordance with  
11 Section 11-99-7.

12           (c) State property tax increments received by the  
13 public entity which created the tax increment district in  
14 which the qualified property is located shall be used:

15           (1) To pay for project costs; and

16           (2) To repay tax increment obligations issued to  
17 fund project costs.

18           Section 5. If a court of competent jurisdiction  
19 adjudges invalid or unconstitutional any clause, sentence,  
20 paragraph, section, or part of this act, such judgment or  
21 decree shall not affect, impair, invalidate, or nullify the  
22 remainder of this act, but the effect of the decision shall be  
23 confined to the clause, sentence, paragraph, section, or part  
24 of this act adjudged to be invalid or unconstitutional.



1           Section 6. All laws or parts of laws which conflict  
2 with this act are repealed.

3           Section 7. The provisions of this act shall become  
4 effective immediately following its passage and approval by  
5 the Governor or its otherwise becoming law. Notwithstanding  
6 the foregoing, the provisions of this act shall apply to any  
7 tax increment district created before the effective date of  
8 this act provided that (1) such tax increment district is  
9 created on or after January 1, 2010, and (2) not less than 50  
10 percent, by area, of the real property within such tax  
11 increment district is an enhanced use lease area.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB283

Senate 09-FEB-10

I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee  
Secretary

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House of Representatives  
Passed: 02-MAR-10

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By: Senator Butler