

1 HB478
2 131160-2
3 By Representatives Mask, Harper, Merrill, Galliher, Williams
4 (P), Hammon, Davis, Shiver, Boothe, Hubbard (J), Baker,
5 Chesteen, Faust, Brown, Johnson (K), Nordgren, Collins, Scott,
6 Roberts, Love, Long, Baughn, Henry, Vance, Ball, Millican,
7 Bridges, Laird, Tuggle, Buttram, Moore (B), Poole, Rich,
8 Fincher, Canfield, Weaver, Lee, Clouse, Wren, Ison, Greer and
9 Jones
10 RFD: Economic Development and Tourism
11 First Read: 07-APR-11

1 the incentives will help retain and create sources of tax
2 revenues for the state and its political subdivisions.

3 (3) The Alabama Development Office and the
4 Department of Revenue shall implement this act and exercise
5 all powers as authorized in this act; however, the application
6 of this act or the offering of any of its incentives as to any
7 particular approved entity shall be in the sole discretion of
8 the State Industrial Development Authority upon the written
9 recommendation of the ADO Director, the Commissioner of
10 Revenue, and the Governor.

11 (4) The powers to be granted and the purposes to be
12 accomplished by this act are proper governmental and public
13 purposes and the inducement of the recruitment, retention, or
14 expansion of quality projects within the state is of paramount
15 importance.

16 (5) Nothing in this act shall be construed to
17 constitute a guarantee or assumption by the state of any debt
18 of any individual, company, corporation, or association nor to
19 authorize the credit of the state to be given, pledged, or
20 loaned to any individual, company, corporation, or
21 association.

22 (6) Nothing in this act gives any approved entity
23 any right to the incentives authorized by this act unless the
24 incentives are approved by the state Industrial Development
25 Authority pursuant to this act.

26 (7) This act is intended to be revenue-neutral with
27 regard to employee withholdings and potential refunds.

1 Section 2. The following words and phrases shall
2 have the following meanings:

3 (1) ADO. The Alabama Development Office.

4 (2) APPROVED ENTITY. Any company or educational
5 institution recommended by the ADO Director, the Commissioner
6 of Revenue, and the Governor in writing and approved by the
7 State Industrial Development Authority in writing pursuant to
8 this act which undertakes a qualifying project.

9 (3) CAPITAL COSTS. All costs and expenses incurred
10 by an approved entity in connection with the acquisition,
11 construction, installation, and equipping of a qualifying
12 project during the period commencing with the date on which
13 such acquisition, construction, installation, and equipping
14 commences and ending on the date on which the qualifying
15 project is placed in service, including, without limitation,
16 all of the following:

17 a. The costs of acquiring, constructing, installing,
18 and equipping a qualifying project, including all obligations
19 incurred for labor and to contractors, subcontractors,
20 builders, and materialmen.

21 b. The costs of acquiring land or rights in land.

22 c. The costs of architectural and engineering
23 services, including test borings, surveys, estimates, plans
24 and specifications, preliminary investigations, environmental
25 mitigation, and supervision of construction, as well as for
26 the performance of all the duties required by or consequent

1 upon the acquisition, construction, and installation of a
2 qualifying project.

3 d. The costs associated with installation of
4 fixtures and equipment; surveys, including archaeological and
5 environmental surveys; site tests and inspections; subsurface
6 site work; excavation; removal of structures, roadways,
7 cemeteries, and other surface obstructions; filling, grading,
8 paving and provisions for drainage, storm water retention,
9 installation of utilities, including water, sewer, sewage
10 treatment, gas, electricity, communications, and similar
11 facilities; and off-site construction of utility extensions to
12 the boundaries of the property.

13 e. All other costs of a nature comparable to those
14 described.

15 f. Costs otherwise defined as capital costs that are
16 incurred by the approved entity where the approved entity is
17 the lessee under a lease that: 1. Has a term of not less than
18 five years, and 2. is characterized as a capital lease for
19 federal income tax purposes; provided, that if the project is
20 a headquarters facility with a lease term of not less than
21 five years, a research and development facility with a lease
22 term of not less than 10 years, or a project at which the
23 predominant trade or business activity conducted is described
24 in the 2007 North American Industry Classification System,
25 promulgated by the Executive Office of the President of the
26 United States, Office of Management and Budget, Sectors 31
27 (other than National Industry 311811), 32, and 33 with a lease

1 term of not less than 10 years, the lease may be characterized
2 as an operating lease for federal income tax purposes in which
3 event capital costs shall include the net present value of the
4 payments made by the approved entity under the lease computed
5 using the applicable federal rate for the month in which the
6 qualifying project is placed in service and for the term most
7 closely approximating the term of the lease. Capital costs
8 shall not include property owned or leased by the approved
9 entity or a related entity before the commencement of the
10 acquisition, construction, installation, or equipping of the
11 qualifying project unless such property was physically located
12 outside the state for a period of at least one year prior to
13 the date on which the qualifying project was placed in
14 service.

15 g. Costs either paid or incurred by 1. a public
16 entity for the benefit of a qualifying project where such
17 costs are treated as costs paid by an approved entity with
18 respect to the qualifying project for federal income tax
19 purposes, such costs shall not include amounts contributed by
20 a public entity to a qualifying project as a capital
21 contribution or gift except to the extent that an approved
22 entity has cost basis in the contribution or gift for federal
23 income tax purposes; or 2. a related entity to an approved
24 entity to the extent such costs are included in or taken into
25 account in determining the approved entity's capital
26 expenditures in the qualifying project, whether or not
27 incurred by an approved entity.

1 (4) COMPANY. Any corporation, partnership, limited
2 liability company, proprietorship, trust, or other business
3 entity, regardless of form.

4 (5) DATA PROCESSING CENTER. An establishment engaged
5 predominantly in the provision of complete processing and
6 specialized reports from data, the provision of automated data
7 processing and data entry services, the provision of an
8 infrastructure for hosting of data processing services, the
9 provision of specialized hosting activities, the provision of
10 application service provisioning, the provision of general
11 time-share mainframe facilities, or some combination of the
12 foregoing.

13 (6) EDUCATIONAL INSTITUTION. A college or university
14 in the state, whether the college or university is established
15 or recognized under the Constitution of Alabama of 1901, or by
16 act of the Legislature.

17 (7) ELIGIBLE EMPLOYEES. Those persons, as set forth
18 in a qualifying project agreement, a. who are being paid
19 directly by an approved entity for working at a qualifying
20 project for not less than 36 hours per work week, whose
21 workday is fully dedicated to the qualifying project, b. who
22 the approved entity identifies as its employees to the U.S.
23 Internal Revenue Service, the Department of Revenue, or the
24 Department of Industrial Relations on returns or reports filed
25 with the foregoing, including, but not limited to, IRS Form
26 941, and c. who are eligible to participate under such benefit
27 plans as are generally applicable to employees holding

1 positions of like kind and character within either the
2 approved entity or a related entity whose employee benefits
3 are equivalent to or better than, from an employee
4 perspective, the approved entity's employee benefits.

5 (8) FAVORED GEOGRAPHIC AREA. The definition in
6 Section 40-18-190, Code of Alabama 1975.

7 (9) GRANT. A transfer of money or property to a
8 transferee that is not a related entity to or an agent of the
9 transferor. The transfer shall not impose any obligation or
10 condition to directly or indirectly repay any amount to the
11 transferor. Obligations or conditions intended solely to
12 assure expenditure of the transferred money or property in
13 accordance with the purpose of the transfer do not prevent a
14 transfer from being a grant.

15 (10) HEADQUARTERS FACILITY. Any trade or business
16 described in the 2007 North American Industry Classification
17 System, promulgated by the Executive Office of the President
18 of the United States, Office of Management and Budget,
19 National Industry 551114.

20 (11) INCENTIVE PERIOD. The time period set forth in
21 a qualifying project agreement for which an approved entity
22 may receive withholding incentives.

23 (12) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.
24 Any trade or business described in the 2007 North American
25 Industry Classification System, promulgated by the Executive
26 Office of the President of the United States, Office of
27 Management and Budget, Sectors 31 (other than National

1 Industry 311811), 32, and 33; Subsectors 423, 424, 493, 511,
2 and 927; Industry Groups 5417, 5415, and 5182, without regard
3 to the premise that data processing and related services be
4 performed in conjunction with a third party; Industries 11331
5 and 48691; and National Industries 115111, 517110, 541380, and
6 561422, other than establishments that originate telephone
7 calls, and includes such trades and businesses as may be
8 hereafter reclassified in any subsequent publication of the
9 North American Industry Classification System or other
10 industry classification system developed in conjunction with
11 the United States Department of Commerce, or any process or
12 treatment facility which recycles, reclaims, or converts
13 materials, which include solids, liquids, or gases, to a
14 reusable product.

15 (13) NEW OR EXPANSION PROJECT. A project meeting any
16 one of the following requirements:

17 a. A headquarters facility at which the predominant
18 trade or business activity conducted will not be the
19 production of electricity.

20 b. A data processing center.

21 c. A research and development facility.

22 d. A qualified educational facility.

23 e. A project at which the predominant trade or
24 business activity conducted will constitute industrial,
25 warehousing, or research activity or any other business
26 activity defined in Section 40-18-190, Code of Alabama 1975,

1 without regard to whether the minimum capital costs
2 requirement set forth for the activity is satisfied.

3 (14) PROJECT. Any land, building, or other
4 improvement, and all real and personal properties deemed
5 necessary or useful in connection therewith, whether or not
6 previously in existence, located or to be located in the
7 state.

8 (15) PUBLIC ENTITY. A public industrial development
9 board or authority, municipality, or county, or other public
10 corporation or political subdivision.

11 (16) QUALIFIED GRANT. A competitively awarded grant
12 made to an educational institution by a person other than the
13 state.

14 (17) QUALIFIED EDUCATIONAL FACILITY. A facility at
15 any educational institution.

16 (18) QUALIFYING PROJECT. Any new or expansion
17 project or retention project to be undertaken by an approved
18 entity. Any proposed qualifying project shall be
19 characterized, in the sole discretion of the State Industrial
20 Development Authority upon the written recommendation of the
21 ADO Director, the Commissioner of Revenue, and the Governor,
22 as either a new or expansion project or a retention project.
23 In making this characterization, the State Industrial
24 Development Authority may consider any criteria which it
25 considers to be appropriate.

26 (19) QUALIFYING PROJECT AGREEMENT. An executed
27 agreement entered into between the state and an approved

1 entity that describes the qualifying project and sets forth
2 the withholding incentives, the incentive period, the number
3 of eligible employees, any termination provisions or
4 provisions which allow the state to recapture withholding
5 incentives in the event the approved entity fails to meet
6 certain minimum job or capital investment requirements, or
7 both, in the case of an educational institution, provisions
8 limiting expenditure of the withholding incentives to the
9 recruitment or retention of academic investigators, and any
10 other terms and conditions which the state, in its sole
11 discretion, may require for an approved entity to qualify for
12 and receive withholding incentives.

13 (20) RELATED ENTITY. Any company or educational
14 institutional that is under common management or control with
15 an approved entity. No educational institution shall be
16 considered a related entity of another educational institution
17 and no educational institution shall be considered a related
18 entity of the state.

19 (21) RESEARCH AND DEVELOPMENT FACILITY. An
20 establishment engaged predominantly in conducting original
21 investigations undertaken on a systematic basis to gain new
22 knowledge or applying research findings or other scientific
23 knowledge to create new or significantly improved products or
24 processes, or both.

25 (22) RETENTION PROJECT. A project, to be used as
26 part of an existing facility of a company or educational

1 institution located in the state, meeting both of the
2 following requirements:

3 a. The project is described in paragraphs a. through
4 e. of subdivision (13).

5 b. In the case of an entity other than an
6 educational institution, the capital costs of the project are
7 not less than the following:

8 1. Two million dollars (\$2,000,000), if the project
9 is not located in a favored geographic area.

10 2. Five hundred thousand dollars (\$500,000), if the
11 project is located in a favored geographic area.

12 (23) WITHHOLDING INCENTIVES. Incentives in the form
13 of the retention by an approved entity of a percentage of
14 state income taxes withheld from eligible employees.

15 Section 3. (a) The ADO Director and the Commissioner
16 of Revenue shall determine, upon initial application on a form
17 approved by the ADO and the Department of Revenue, whether to
18 recommend to the Governor, in writing, that a company or
19 educational institution be approved by the State Industrial
20 Development Authority as an approved entity. In making their
21 determination, the ADO Director and the Commissioner of
22 Revenue may consider any criteria which they consider, in
23 their sole discretion, to be appropriate. The ADO Director and
24 the Commissioner of Revenue, in making their determination,
25 shall conduct a cost/benefit analysis with respect to a
26 proposed qualifying project and the withholding incentives

1 proposed to be granted by the State Industrial Development
2 Authority with respect thereto.

3 (b) After reviewing the recommendation of the ADO
4 Director and the Commissioner of Revenue, the Governor, in his
5 or her sole discretion, shall determine whether to recommend
6 to the State Industrial Development Authority, in writing,
7 that a company or educational institution be approved by the
8 State Industrial Development Authority as an approved entity.

9 (c) After reviewing the recommendations of the ADO
10 Director, the Commissioner of Revenue, and the Governor, the
11 State Industrial Development Authority, in its sole
12 discretion, shall determine whether to approve, in writing, a
13 company or educational institution as an approved entity. In
14 making its determination, the State Industrial Development
15 Authority shall consider whether approving a company or
16 educational institution as an approved entity serves a valid
17 public purpose and is in the best interests of the citizens of
18 the state.

19 (d) After the State Industrial Development Authority
20 approves a company or educational institution as an approved
21 entity, the approved entity must enter into a qualifying
22 project agreement with the state in order to qualify for and
23 receive withholding incentives. The authority, in its sole
24 discretion, may require that an approved entity meet minimum
25 job or capital investment requirements, or both, to avoid the
26 state recapturing withholding incentives or terminating the
27 qualifying project agreement.

1 Section 4. (a) An approved entity that meets the
2 qualifications specified in this act shall qualify to receive
3 withholding incentives in an amount, determined in the sole
4 discretion of the State Industrial Development Authority,
5 equal to:

6 (1) In the case of a new or expansion project, one
7 percent to 90 percent of the amount of state income taxes
8 withheld from eligible employees.

9 (2) In the case of a retention project, one percent
10 to 75 percent of the amount of state income taxes withheld
11 from eligible employees.

12 (b) The incentive period shall be determined in the
13 sole discretion of the State Industrial Development Authority
14 upon written recommendations by the ADO Director, the
15 Commissioner of Revenue, and the Governor, except that in no
16 event shall the incentive period exceed 20 years after a
17 qualifying project is placed in service.

18 (c) Withholding incentives shall be reduced or
19 eliminated with respect to a qualifying project at the time
20 the sum of all withholding incentives received with respect to
21 such qualifying project and capital credits received under
22 Article 7, Chapter 18 of Title 40, Code of Alabama 1975, with
23 respect to such qualifying project equals 100 percent of the
24 capital costs of such qualifying project, all to the end that
25 the aggregate amount of withholding incentives and capital
26 credits shall not exceed 100 percent of the capital costs of
27 the qualifying project.

1 (d) An eligible employee is allowed a credit against
2 his or her state income taxes in an amount equal to 100
3 percent of the withholding incentives retained by an approved
4 entity from his or her wages during the tax year.

5 Section 5. (a) Within 90 days after the end of a
6 calendar quarter for which an approved entity has qualified to
7 receive a withholding incentive, the approved entity shall
8 certify to the Department of Revenue, on a form approved by
9 the Department of Revenue, the actual number of eligible
10 employees for the calendar quarter, the payroll of eligible
11 employees for the calendar quarter, and any other information
12 required by the qualifying project agreement. The Department
13 of Industrial Relations shall verify the actual number of
14 eligible employees employed at the qualifying project during
15 the relevant calendar quarter. If the Department of Industrial
16 Relations is not able to provide such verification utilizing
17 all available resources, the Department of Revenue may request
18 such additional information from the approved entity as may be
19 necessary. The Department of Revenue may audit any approved
20 entity periodically to monitor compliance by the approved
21 entity with this act.

22 (b) An approved entity may receive withholding
23 incentives only in accordance with a qualifying project
24 agreement. If an approved entity that is receiving withholding
25 incentives expands a qualifying project, it may apply to the
26 ADO and the Department of Revenue for additional withholding
27 incentives based on the new eligible employees.

1 Section 6. The ADO, the Department of Revenue, and
2 the State Industrial Development Authority, with the
3 assistance of other agencies, may adopt rules, in accordance
4 with the Administrative Procedure Act, and application forms
5 and other forms necessary to implement their respective duties
6 and responsibilities under this act.

7 Section 7. All laws or parts of laws which conflict
8 with this act are repealed.

9 Section 8. This act shall become effective
10 immediately following its passage and approval by the Governor
11 or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

16
17
18
19

House of Representatives

Read for the first time and re-ferred to the House of Representatives committee on Economic Development and Tourism..... 07-APR-11

Read for the second time and placed on the calendar with 1 substitute and..... 14-APR-11

Read for the third time and passed as amended..... 04-MAY-11

Yeas 99, Nays 0, Abstains 0

Greg Pappas
Clerk