

1 SB15
2 115349-1
3 By Senator Ward
4 RFD: Finance and Taxation General Fund
5 First Read: 01-MAR-11
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8 SYNOPSIS: This bill would provide tax incentives to
9 Alabama companies that create jobs. This bill would
10 provide inducements for businesses located in
11 Alabama. This bill would provide certain
12 requirements in order to qualify for the tax
13 incentives.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 To provide tax incentives for companies in Alabama
20 and to provide requirements and standards for qualifying for
21 certain tax incentives.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

1 processes shipments of tangible personal property to customers
2 and if at least 75 percent of the dollar amount of goods sold
3 through the facility are sold to customers outside of Alabama.
4 Retail sales made inside the facility to employees working at
5 the facility are not considered for purposes of the 12-day and
6 75 percent limitation.

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

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

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

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

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

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

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

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

12 a. Two hundred fifty jobs at a single location.

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

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

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

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

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

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

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

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

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

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

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

19 (b) The Alabama Department of Economic and Community
20 Affairs shall rank and designate the state's counties by
21 December 31 each year using data from the state Department of
22 Finance and the United States Department of Commerce. The
23 county designations are effective for taxable years that begin
24 in the following calendar year. A county's designation may not
25 be lowered in credit amount more than one tier in the
26 following calendar year. The counties are ranked using the
27 last three completed calendar years of per capita income data

1 and the last 36 months of unemployment rate data that are
2 available on November first, with equal weight given to
3 unemployment rate and per capita income as follows:

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

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

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

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

18 (5) A county, any portion of which is located within
19 25 miles of the boundaries of an applicable military
20 installation or applicable federal facility shall receive the
21 next increased credit designation for five years beginning
22 with the year in which the military installation or federal
23 facility became an applicable military installation or
24 applicable federal facility with the additional requirement
25 that the military installation must have reduced employment on
26 the installation of at least 3,000 employees.

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

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

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

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

25 (f) In a county which is at least 1,000 square miles
26 in size and which has had an unemployment rate greater than
27 the state average for the past 10 years and an average per

1 capita income lower than the average state per capita income
2 for the past ten years, and which is not included in any of
3 the county classifications contained in this subsection, the
4 credit allowed is two tiers higher than the credit for which
5 the county otherwise would qualify.

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

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

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

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

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

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

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

8 (i) Subject to the conditions provided in subsection
9 (r) of this section, a job tax credit is allowed for five
10 years beginning in year two after the creation of the job for
11 each new full-time job created if the minimum level of new
12 jobs is maintained. The credit is available to taxpayers with
13 99 or fewer employees that increase employment by two or more
14 full-time jobs, and may be received only if the gross wages of
15 the full-time jobs created pursuant to this section amount to
16 a minimum of 120 percent of the county's or state's average
17 per capita income, whichever is lower. No credit is allowed
18 for the year or any subsequent year in which the net
19 employment increase falls below the minimum level of two. The
20 amount of the initial job credit is as described in subsection
21 (c).

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

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

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

6 (3) One thousand seven hundred fifty dollars
7 (\$1,750) for each new full-time job created in under developed
8 counties.

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

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

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

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

1 business is in operation for less than 12 months a year, the
2 number of new and additional new full-time jobs is determined
3 using the monthly average for the months the business is in
4 operation.

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

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

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

23 (m) A credit claimed pursuant to this section but
24 not used in a taxable year may be carried forward for 15 years
25 from the taxable year in which the credit is earned by the
26 taxpayer. Credits that are carried forward must be used in the

1 order earned and before jobs credits claimed in the current
2 year.

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

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

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

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

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

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

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

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

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

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

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

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

25 a. Do not exclusively benefit the taxpayer;

26 b. Are built to applicable standards; and

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

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

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

14 (1) Expenses paid or accrued by the taxpayer.

15 (2) Contributions made to a governmental entity.

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

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

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

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

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

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

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

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

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

26 (i) A corporation which files or is required to file
27 a consolidated return is entitled to the income tax credit

1 allowed by this section on a consolidated basis. The tax
2 credit may be determined on a consolidated basis regardless of
3 whether or not the corporation entitled to the credit
4 contributed to the tax liability of the consolidated group.

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

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

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

22 (2) Fifteen percent of the wages paid to the
23 employee for each full month of employment during the second
24 12 months of employment.

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

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

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

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

24 (e) Nothing in this section may be construed to
25 require employers to pay for all or part of any health
26 insurance coverage for a qualified employee in order to claim

1 the credit if an employer does not pay for all or part of
2 health insurance coverage for his other employees.

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

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

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

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