

1 HB599
2 139121-3
3 By Representatives Scott, Mask and Collins
4 RFD: Ways and Means Education
5 First Read: 22-MAR-12

1 ENGROSSED

2
3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Sections 40-9B-3, 40-18-190, and 40-18-193,
9 Code of Alabama 1975, to allow the governing body of a
10 municipality, county, or a public industrial authority to
11 grant abatements of certain ad valorem taxes and construction
12 related transaction taxes to private users of tourism
13 destination attractions for a period of up to 10 years and to
14 enable tourism destination attractions to qualify for capital
15 credits.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. This act shall be known and may be cited
18 as the Alabama Tourism Destination Attraction Incentive Act.

19 Section 2. Sections 40-9B-3, 40-18-190, and
20 40-18-193, Code of Alabama 1975, are amended to read as
21 follows:

22 "§40-9B-3.

23 "(a) For purposes of this chapter, the following
24 words and phrases mean:

25 "(1) ABATE, ABATEMENT. A reduction or elimination of
26 a taxpayer's liability for tax or payments required to be made
27 in lieu thereof. An abatement of transaction taxes imposed

1 under Chapter 23 of this title, or payments required to be
2 made in lieu thereof, shall relieve the seller from the
3 obligation to collect and pay over the transaction tax as if
4 the sale were to a person exempt, to the extent of the
5 abatement, from the transaction tax.

6 "(2) ALTERNATIVE ENERGY RESOURCES. The definition
7 given in Section 40-18-1.

8 "(3) CONSTRUCTION RELATED TRANSACTION TAXES. The
9 transaction taxes imposed by Chapter 23 of this title, or
10 payments required to be made in lieu thereof, on tangible
11 personal property and taxable services incorporated into an
12 industrial development property, the cost of which may be
13 added to capital account with respect to the property,
14 determined without regard to any rule which permits
15 expenditures properly chargeable to capital account to be
16 treated as current expenses.

17 "(4) DATA PROCESSING CENTER. An establishment at
18 which not less than 50 new jobs are located, and which is
19 engaged in the provision of complete processing and
20 specialized reports from data, the provision of automated data
21 processing and data entry services, the provision of an
22 infrastructure for hosting or data processing services, the
23 provision of specialized hosting activities, the provision of
24 application service provisioning, the provision of general
25 time-share mainframe facilities, or some combination of the
26 foregoing, without regard to whether any other activities are
27 conducted at the establishment.

1 "(5) EDUCATION TAXES. Ad valorem taxes, or payments
2 required to be made in lieu thereof, that must, pursuant to
3 the Constitution of Alabama of 1901, as amended, legislative
4 act, or the resolution or other action of the governing board
5 authorizing the tax, be used for educational purposes or for
6 capital improvements for education and local construction
7 related transaction taxes levied for educational purposes or
8 for capital improvements for education.

9 "(6) HEADQUARTERS FACILITY. Any trade or business
10 described in the 2007 North American Industry Classification
11 System, promulgated by the Executive Office of the President
12 of the United States, Office of Management and Budget,
13 National Industry 551114, at which not less than 50 new jobs
14 are located.

15 "(7) HYDROPOWER PRODUCTION. The definition given in
16 Section 40-18-1.

17 "(8) INDUCEMENT. Refers to an agreement, or an
18 "inducement agreement," entered into between a private user
19 and a public authority or county or municipal government
20 and/or a resolution or other official action, an "inducement
21 resolution," "inducement letter," or "official action" adopted
22 by a public authority or county or municipal government, in
23 each case expressing, among other things, the present intent
24 of such public authority or county or municipal government to
25 issue bonds in connection with the private use property
26 therein described.

1 "(9) INDUSTRIAL DEVELOPMENT PROPERTY. Real and/or
2 personal property acquired in connection with establishing or
3 expanding an industrial or research enterprise in Alabama.

4 "(10) INDUSTRIAL OR RESEARCH ENTERPRISE.

5 "a. Any trade or business described in the 2007
6 North American Industry Classification System, promulgated by
7 the Executive Office of the President of the United States,
8 Office of Management and Budget, Sectors 31 (other than
9 National Industry 311811), 32, and 33; Subsectors 423, 424,
10 511, and 927; Industry Groups 5417, 5415, and 5182 (without
11 regard to the premise that data processing and related
12 services be performed in conjunction with a third-party);
13 Industries 11331 and 48691; and National Industries 115111,
14 517110, 541380, and 561422 (other than establishments that
15 originate telephone calls) and includes such trades and
16 businesses as may be hereafter reclassified in any subsequent
17 publication of the North American Industry Classification
18 System or other industry classification system developed in
19 conjunction with the United States Department of Commerce, or
20 any process or treatment facility which recycles, reclaims, or
21 converts any materials, which include solids, liquids, or
22 gases, to a reusable product.

23 "b. With respect to abatements granted in accordance
24 with Section 40-9B-9, and only with respect to such
25 abatements, "industrial or research enterprise" means any
26 trade or business described in the 2007 North American
27 Industry Classification System within Subsector 493

1 (Warehousing and Storage), Industry Number 488310 (Port and
2 Harbor Operations), or Industry Number 488320 (Marine Cargo
3 Handling), when such trade or business is conducted on
4 premises in which the Alabama State Port Authority has an
5 ownership, leasehold, or other possessory interest and such
6 premises are used as part of the operations of the Alabama
7 State Port Authority.

8 "c. "Industrial or research enterprise" includes the
9 above-described trades and business and any others as may
10 hereafter be reclassified in any subsequent publication of the
11 NAICS or similar industry classification system developed in
12 conjunction with the United States Department of Commerce or
13 Office of Management and Budget.

14 "d. "Industrial or research enterprise" also
15 includes any underground natural gas storage facility which is
16 located in the Gulf Opportunity Zone, as that phrase is
17 defined in the Gulf Opportunity Zone Act of 2005, developed
18 from existing geologic reservoirs, including, without
19 limitation, salt domes, and placed in service on or before
20 December 31, 2013.

21 "e. "Industrial or research enterprise" also
22 includes any plant, property, or facility that meets both of
23 the following:

24 "1. It produces electricity from:

25 "(i) Alternative energy resources and has capital
26 costs of at least one hundred million dollars (\$100,000,000);
27 or

1 (ii) Hydropower production and has capital costs of
2 at least five million dollars (\$5,000,000).

3 "2. All or a portion of the plant, property, or
4 facility is owned by one or more of the following: A utility
5 described in Section 37-4-1(7)a., an entity organized under
6 the provisions of Chapter 6 of Title 37, or an authority both
7 organized and existing pursuant to the provisions of Chapter
8 50A of Title 11 and subject to the payments required to be
9 made in lieu of ad valorem, sales, use, license, and severance
10 taxes imposed by Section 11-50A-7, or an entity in which one
11 or more of the foregoing owns an interest.

12 "f. "Industrial or research enterprise" also
13 includes any headquarters facility.

14 "g. "Industrial or research enterprise" also
15 includes any data processing center.

16 "h. "Industrial or research enterprise" also
17 includes any research and development facility.

18 "i. "Industrial or research enterprise" also
19 includes any renewable energy facility.

20 "j. "Industrial or research enterprise" also
21 includes any tourism destination attraction.

22 "(11) MAJOR ADDITION. Any addition to an existing
23 industrial development property that equals the lesser of: 30
24 percent of the original cost of the industrial development
25 property or two million dollars (\$2,000,000). For purposes of
26 this subsection, the original cost of existing industrial
27 development property shall be the amount of industrial

1 development property with respect to which an abatement was
2 granted under this chapter when the property was constructed,
3 or if the existing industrial development property was
4 constructed before January 1, 1993, the maximum amount that
5 would have been allowed if the provisions of this chapter had
6 applied at the time it was constructed. Only property that
7 constitutes industrial development property shall be taken
8 into account in making the determination in the previous
9 sentence. Major addition shall include any addition costing at
10 least two million dollars (\$2,000,000) which constitutes an
11 industrial or research enterprise, regardless of whether added
12 to an existing industrial development property.

13 "(12) MAXIMUM EXEMPTION PERIOD. Except as provided
14 in Section 40-9B-11, a period equal to the shorter of:

15 "a. Ten years from and after: 1. The date of initial
16 issuance by a county, city, or public authority of bonds to
17 finance any costs of a private use property, or 2. If no such
18 bonds are ever issued, the later of: (i) The date on which
19 title to the property was acquired by or vested in the county,
20 city, or public authority, or (ii) The date on which the
21 property is or becomes owned, for federal income tax purposes,
22 by a private user; or

23 "b. The weighted average economic life of the assets
24 comprising such property, determined consistently with the
25 provisions of 26 U.S.C. § 147(b) and measured from the date
26 such property is placed in service.

1 "(13) MORTGAGE AND RECORDING TAXES. The taxes
2 imposed by Chapter 22 of this title.

3 "(14) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem
4 taxes, or payments required to be made in lieu thereof,
5 imposed by the state, counties, municipalities, and other
6 taxing jurisdictions of Alabama that are not required to be
7 used for educational purposes or for capital improvements for
8 education.

9 "(15) PERSON. Includes any individual, partnership,
10 trust, estate, or corporation.

11 "(16) PRIVATE USER. Any individual, partnership, or
12 corporation organized for profit that is or will be treated as
13 the owner of private use property for federal income tax
14 purposes, any entity organized under Chapter 6 of Title 37,
15 and any authority both organized and existing pursuant to
16 Chapter 50A of Title 11 and subject to the payments required
17 to be made in lieu of ad valorem, sales, use, license, and
18 severance taxes imposed by Section 11-50A-7.

19 "(17) PRIVATE USE INDUSTRIAL PROPERTY. Private use
20 property that also constitutes industrial development
21 property.

22 "(18) PRIVATE USE PROPERTY. Any real and/or personal
23 property which is or will be treated as owned by a private
24 user for federal income tax purposes even though title may be
25 held by a public authority or municipal or county government;
26 any real and/or personal property which is owned by any entity
27 organized under Chapter 6 of Title 37; and any real and/or

1 personal property which is owned by any authority both
2 organized and existing pursuant to Chapter 50A of Title 11,
3 and subject to the payments required to be made in lieu of ad
4 valorem, sales, use, license, and severance taxes imposed by
5 Section 11-50A-7.

6 "(19) PUBLIC AUTHORITY. A corporation created for
7 public purposes pursuant to a provision of the Constitution of
8 Alabama of 1901, or a general or local law that authorized it
9 to issue bonds, the interest on which is exempt from the
10 Alabama income tax, as in effect on May 21, 1992.

11 "(20) PUBLIC INDUSTRIAL AUTHORITY. A public
12 authority authorized to issue bonds to acquire, construct,
13 equip, or finance industrial development property.

14 "(21) RENEWABLE ENERGY FACILITY. Any plant,
15 property, or facility that either:

16 "a. Produces electricity or natural gas, in whole or
17 in part, from biofuels as such term is defined in Section
18 2-2-90(c)(2) or from renewable energy resources as such term
19 is defined in Section 40-18-1(30) with the exception that
20 hydropower production shall be excluded from such definition;
21 or

22 "b. Produces biofuel as such term is defined in
23 Section 2-2-90(c)(2).

24 "(22) RESEARCH AND DEVELOPMENT FACILITY. An
25 establishment engaged in conducting original investigations
26 undertaken on a systematic basis to gain new knowledge or
27 applying research findings or other scientific knowledge to

1 create new or significantly improved products or processes, or
2 both.

3 "(23) STATEMENT OF INTENT. A written statement of
4 intent to claim an abatement provided in this chapter, or to
5 petition for local tax abatement, relating to an industrial or
6 research enterprise described in paragraph e. of subdivision
7 (10) of this subsection that is filed with the Department of
8 Revenue at any time prior to the date on which the industrial
9 or research enterprise described in paragraph e. of
10 subdivision (10) of this subsection is placed in service in
11 accordance with such procedures and on such form or forms as
12 may be prescribed by the Department of Revenue. Such statement
13 of intent shall contain a description of the industrial or
14 research enterprise described in paragraph e. of subdivision
15 (10) of this subsection; the date on which the acquisition,
16 construction, installation, or equipping of the industrial or
17 research enterprise described in paragraph e. of subdivision
18 (10) of this subsection was commenced or is expected to
19 commence; the actual or, if not known, the estimated capital
20 costs of the industrial or research enterprise described in
21 paragraph e. of subdivision (10) of this subsection; the
22 number of new employees to be employed at the industrial or
23 research enterprise described in paragraph e. of subdivision
24 (10) of this subsection; and any other information required by
25 the Department of Revenue.

26 "(24) TOURISM DESTINATION ATTRACTION. A commercial
27 enterprise which is open to the public not less than 120 days

1 during a calendar year and is designed to attract visitors
2 from inside or outside of the State of Alabama, typically for
3 its inherent cultural value, historical significance, natural
4 or man-made beauty, or entertainment or amusement
5 opportunities. The term shall include, but not be limited to,
6 a cultural or historical site; a botanical garden; a museum; a
7 wildlife park or aquarium open to the public that cares for
8 and displays a collection of animals or fish; an amusement
9 park; a convention hotel and conference center; a water park;
10 or a spectator venue or arena.

11 "A tourism destination attraction shall not include
12 a facility primarily devoted to the retail sale of goods; a
13 shopping center; a restaurant; a movie theater; a bowling
14 alley; a fitness center; a miniature golf course; or a
15 nightclub. Provided, however, that the capital costs of the
16 construction of a tourism destination attraction may include
17 the capital costs associated with the construction of any
18 retail establishment, restaurant or other portion of the
19 tourism destination attraction.; ~~or a recreational facility~~
20 ~~unless such facility is designed to attract visitors who would~~
21 ~~stay overnight in commercial lodging either at or near the~~
22 ~~facility while visiting the tourism destination attraction.~~
23 The term also does not include any gaming facility or
24 establishment that the Director of the Alabama Development
25 Office Secretary of the Department of Commerce deems to be
26 primarily serving the local community.

1 "(b) The abatements of ad valorem taxes, and
2 payments in lieu thereof, allowed by amendments to this
3 section by Act 2008-275 shall become effective for projects
4 for which statements of intent are filed after December 31,
5 2011. No ad valorem taxes, or payments in lieu thereof, shall
6 be abated for periods prior to January 1, 2012. The other
7 abatements allowed by amendments made to this section by Act
8 2008-275 shall become effective after December 31, 2011.

9 For a qualifying industrial or research enterprise
10 described in Section 40-9B-3(a)(10)j., the approval of the
11 abatement of a specified ad valorem tax or construction
12 related tax levied or imposed by a county or municipality, or
13 payments required to be made in lieu thereof, shall take
14 effect only upon adoption of a resolution by the governing
15 body of that county or municipality approving such abatement
16 or abatements.

17 "§40-18-190.

18 "(a) The following terms shall have the following
19 meanings, respectively, when used in this article unless the
20 context clearly requires otherwise:

21 "(1) BASE WAGE REQUIREMENT.

22 "a. For qualifying projects in which an investing
23 company files a written statement of intent (Form INT) with
24 the department on or before May 21, 2009, "base wage
25 requirement" means either an average hourly wage of not less
26 than eight dollars (\$8) per hour or an average total

1 compensation of not less than ten dollars (\$10) per hour,
2 including benefits.

3 "b. For qualifying projects that are not located in
4 a favored geographic area and for which an investing company
5 files a written statement of intent (Form INT) with the
6 department after May 21, 2009, "base wage requirement" means
7 an average hourly wage, inclusive of all employees in Alabama,
8 of not less than the lesser of fifteen dollars (\$15) per hour
9 (indexed annually in accordance with the manner provided in
10 Section 25-5-68) or the average hourly wage of the county
11 where the qualifying project is located (as reported annually
12 by the Department of Industrial Relations), both excluding
13 benefits.

14 "c. For qualifying projects that are located in a
15 favored geographic area and for which an investing company
16 files a written statement of intent (Form INT) with the
17 department after May 21, 2009, "base wage requirement" means
18 an average hourly wage, inclusive of all employees in Alabama,
19 of not less than the lesser of twelve dollars (\$12) per hour
20 (indexed annually in accordance with the manner provided in
21 Section 25-5-68) or the average hourly wage of the county
22 where the qualifying project is located (as reported annually
23 by the Department of Industrial Relations), both excluding
24 benefits.

25 "d. Notwithstanding the foregoing, wages of direct
26 processors of agriculture food products shall be subject to
27 the local labor market. In the event that reliable local labor

1 market statistics are not available, the department shall, by
2 regulation or ruling, establish a source of wage information
3 that best represents the average hourly wage rate in Alabama
4 for direct processors of agriculture food products.

5 "(2) CAPITAL COSTS. All costs and expenses incurred
6 by one or more investing companies in connection with the
7 acquisition, construction, installation and equipping of a
8 qualifying project during the period commencing with the date
9 on which such acquisition, construction, installation and
10 equipping commences and ending on the date on which the
11 qualifying project is placed in service, including, without
12 limitation all of the following:

13 "a. The costs of acquiring, constructing,
14 installing, equipping, and financing a qualifying project,
15 including all obligations incurred for labor and to
16 contractors, subcontractors, builders, and materialmen.

17 "b. The costs of acquiring land or rights in land
18 and any cost incidental thereto, including recording fees.

19 "c. The costs of contract bonds and of insurance of
20 all kinds that may be required or necessary during the
21 acquisition, construction, or installation of a qualifying
22 project.

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

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

3 "e. 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; off-site construction of utility extensions to the
12 boundaries of the property.

13 "f. All other costs of a nature comparable to those
14 described, including, without limitation, all project costs
15 which are required to be capitalized for federal income tax
16 purposes pursuant to 26 U.S.C. § 263A.

17 "g. Costs otherwise defined as capital costs that
18 are incurred by the investing company where the investing
19 company is the lessee under a lease that: (1) has a term of
20 not less than five years, and (2) is characterized as a
21 capital lease for federal income tax purposes; provided, that
22 if the project is a headquarters facility, the lease may be
23 characterized as an operating lease for federal income tax
24 purposes in which event capital costs shall include the net
25 present value of the payments made by the investing company
26 under the lease computed using the applicable federal rate for
27 the month in which the qualifying project is placed in service

1 and for the term most closely approximating the term of the
2 lease. Capital costs shall not include property owned or
3 leased by the investing company or a related party before the
4 commencement of the acquisition, construction, installation or
5 equipping of the qualifying project unless such property was
6 physically located outside the state for a period of at least
7 one year prior to the date on which the qualifying project was
8 placed in service.

9 "h. Costs either paid or incurred by (i) a public
10 industrial development board or authority, city, or county, or
11 other public corporation or political subdivision (a "public
12 entity") for the benefit of a qualifying project where such
13 costs are treated as costs paid by an investing company with
14 respect to the qualifying project for federal income tax
15 purposes (such costs shall not include amounts contributed by
16 a public entity to a qualifying project as a capital
17 contribution or gift except to the extent that an investing
18 company has cost basis in the contribution or gift for federal
19 income tax purposes); or (ii) a related party to an investing
20 company to the extent such costs are included in or taken into
21 account in determining the investing company's federal income
22 tax basis in the qualifying project, whether or not incurred
23 by an investing company.

24 "(3) CAPITAL CREDIT. An annual amount equal to up to
25 five percent of the capital costs of the qualifying project,
26 such amount to be credited or allowed in accordance with
27 Section 40-18-194 and Section 40-18-195 hereof and other

1 provisions of law, against the state income tax or financial
2 institution excise tax, as provided in Section 40-18-194,
3 liability generated by or arising out of the qualifying
4 project in each of the 20 years commencing with the year
5 during which the qualifying project is placed in service and
6 continuing for 19 consecutive years thereafter.

7 "(4) DATA PROCESSING CENTER. An establishment
8 engaged in the provision of complete processing and
9 specialized reports from data, the provision of automated data
10 processing and data entry services, the provision of an
11 infrastructure for hosting or data processing services, the
12 provision of specialized hosting activities, the provision of
13 application service provisioning, the provision of general
14 time-share mainframe facilities, or some combination of the
15 foregoing, without regard to whether any other activities are
16 conducted at the establishment.

17 "(5) DEPARTMENT. The Alabama Department of Revenue.

18 "(6) FAVORED GEOGRAPHIC AREA. Either of the
19 following:

20 "a. Any area designated or created as an enterprise
21 zone by law or that is governed by the Alabama Enterprise Zone
22 Act.

23 "b. 1. Any Alabama county which is considered to be
24 less developed. A county is considered to be less developed if
25 it has been found to be less developed by the Alabama
26 Department of Industrial Relations using the most current data
27 available from the United States Departments of Labor or

1 Commerce, the United States Bureau of the Census, or any other
2 federal or state agency, and which finding shall be made
3 immediately upon passage of Act 2001-965 and not later than
4 January 1 of each year thereafter.

5 "2. A county shall be found to be less developed if
6 it is ranked as the forty-fifth through sixty-seventh county,
7 inclusive, using the following factors:

8 "(i) Percent change in population over the most
9 recent five-year period.

10 "(ii) Personal per capita income in the last
11 calendar year for which data are available.

12 "(iii) The average percent employed over the last 12
13 months for which data are available.

14 "3. The factors used in ranking counties will be
15 weighted in the following manner:

16 "(i) Percent change in population (25 percent).

17 "(ii) Personal per capita income (25 percent).

18 "(iii) Average percent employed (50 percent).

19 "(7) HEADQUARTERS FACILITIES.

20 "a. For qualifying projects in which an investing
21 company files a written statement of intent (Form INT) with
22 the department on or before May 21, 2009, "headquarters
23 facilities" means a facility which will serve as the national,
24 regional or state headquarters for an investing company that
25 conducts significant business operations outside the state and
26 will serve as the principal office of the principal operating
27 officer of the qualifying project. For purposes of this

1 Article 7, the term "principal operating officer" is defined
2 as the person with chief responsibility for the daily business
3 operations of the qualifying project.

4 "b. For qualifying projects in which an investing
5 company files a written statement of intent (Form INT) with
6 the department after May 21, 2009, "headquarters facilities"
7 means any trade or business described in the 2007 North
8 American Industry Classification System, promulgated by the
9 Executive Office of the President of the United States, Office
10 of Management and Budget, National Industry 551114.

11 "(8) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.
12 Any trade or business described in the 2007 North American
13 Industry Classification System, promulgated by the Executive
14 Office of the President of the United States, Office of
15 Management and Budget, Sectors 31 (other than National
16 Industry 311811), 32, and 33; Subsectors 423, 424, 511, and
17 927; Industry Groups 5417, 5415, and 5182 (without regard to
18 the premise that data processing and related services be
19 performed in conjunction with a third-party); Industries 11331
20 and 48691; and National Industries 115111, 517110, 541380, and
21 561422 (other than establishments that originate telephone
22 calls) and includes such trades and businesses as may be
23 hereafter reclassified in any subsequent publication of the
24 North American Industry Classification System or other
25 industry classification system developed in conjunction with
26 the United States Department of Commerce, or any process or
27 treatment facility which recycles, reclaims, or converts

1 materials, which include solids, liquids, or gases, to a
2 reusable product.

3 "(9) INVESTING COMPANY. Any corporation,
4 partnership, limited liability company, proprietorship, trust
5 or other business entity, regardless of form, making a
6 qualified investment.

7 "(10) NEW EMPLOYEES. Those persons who have not been
8 previously employed at the site on which the qualifying
9 project is or will be located or by an investing company or
10 companies in the state; will be employed full-time at the
11 qualifying project; and will be subject to the personal income
12 tax imposed by Section 40-18-2, upon commencement of
13 employment at the qualifying project.

14 "(11) PROJECT. Any land, building or other
15 improvement, and all real and personal properties deemed
16 necessary or useful in connection therewith, whether or not
17 previously in existence, located or to be located in the
18 state.

19 "(12) QUALIFYING INVESTMENT. The undertaking by one
20 or more investing companies of a qualifying project.

21 "(13) QUALIFYING PROJECT. A project to be sponsored
22 or undertaken by one or more investing companies meeting any
23 one of the following requirements:

24 "a. A project the capital costs of which are not
25 less than two million dollars (\$2,000,000), and at which the
26 predominant trade or business activity conducted will
27 constitute industrial, warehousing, or research activity.

1 "b. A small business addition the capital costs of
2 which are not less than one million dollars (\$1,000,000), and
3 at which the predominant trade or business activity conducted
4 will constitute industrial, warehousing, or research activity.

5 "c. A headquarters facility the capital costs of
6 which are not less than two million dollars (\$2,000,000) at
7 which the predominant trade or business activity conducted
8 will not be the production of electricity.

9 "d. A project located in a favored geographic area
10 the capital costs of which are not less than five hundred
11 thousand dollars (\$500,000), and at which the predominant
12 trade or business activity conducted will constitute
13 industrial, warehousing, or research activity.

14 "e. A project owned by a utility described in
15 Section 37-4-1(7)a., or owned by an investing company which is
16 itself owned by a utility, the capital costs of which are not
17 less than the following:

18 "1. One hundred million dollars (\$100,000,000), if
19 the predominant trade or business activity conducted will be
20 the production of electricity from alternative energy
21 resources.

22 "2. Five million dollars (\$5,000,000), if the
23 predominant trade or business activity conducted will be the
24 production of electricity from hydropower production.

25 "f. A data processing center the capital costs of
26 which are not less than the following:

1 "1. Two million dollars (\$2,000,000), if the data
2 processing center is not located in a favored geographic area.

3 "2. Five hundred thousand dollars (\$500,000), if the
4 data processing center is located in a favored geographic
5 area.

6 "g. A research and development facility the capital
7 costs of which are not less than the following:

8 "1. Two million dollars (\$2,000,000), if the
9 research and development facility is not located in a favored
10 geographic area.

11 "2. Five hundred thousand dollars (\$500,000), if the
12 research and development facility is located in a favored
13 geographic area.

14 "h. A renewable energy facility the capital costs of
15 which are not less than the following:

16 "1. Two million dollars (\$2,000,000), if the
17 renewable energy facility is not located in a favored
18 geographic area.

19 "2. Five hundred thousand dollars (\$500,000), if the
20 renewable energy facility is located in a favored geographic
21 area.

22 "i. A tourism destination attraction the capital
23 costs of which are not less than the following:

24 "1. ~~Ten million dollars (\$10,000,000)~~ Twenty million
25 (\$20,000,000) if the tourism destination attraction is not
26 located in a favored geographic area.

1 ~~"2. Three million dollars (\$3,000,000)~~ Five million
2 dollars (\$5,000,000) if the tourism destination attraction is
3 located in a favored geographic area.

4 "(14) RELATED PARTY. A person or entity that bears a
5 relationship to an investing company described in Section
6 267(b), (c), or (e) of the Internal Revenue Code of 1986, as
7 amended.

8 "(15) RENEWABLE ENERGY FACILITY. Any plant,
9 property, or facility that either:

10 "a. Produces electricity or natural gas, in whole or
11 in part, from biofuels as such term is defined in Section
12 2-2-90(c) (2) or from renewable energy resources as such term
13 is defined in Section 40-18-1(30) with the exception that
14 hydropower production shall be excluded from such definition;
15 or

16 "b. Produces biofuel as such term is defined in
17 Section 2-2-90(c) (2).

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

24 "(17) SMALL BUSINESS ADDITION. Any land, building or
25 other improvement, and all real and personal properties deemed
26 necessary or useful in connection therewith, whether or not
27 previously in existence, to be used as a part of any existing

1 facility of a business located in the state that, prior to the
2 date on which the addition is placed in service, had 100 or
3 fewer full-time employees.

4 "(18) TAX YEAR. The applicable taxable year as the
5 term is defined in Section 40-18-1(36).

6 "(19) TOURISM DESTINATION ATTRACTION. A commercial
7 enterprise which is open to the public not less than 120 days
8 during a calendar year and is designed to attract visitors
9 from inside or outside of the State of Alabama, typically for
10 its inherent cultural value, historical significance, natural
11 or man-made beauty, or entertainment or amusement
12 opportunities. The term shall include, but not be limited to,
13 a cultural or historical site; a botanical garden; a museum; a
14 wildlife park or aquarium open to the public that cares for
15 and displays a collection of animals or fish; an amusement
16 park; a convention hotel and conference center; a water park;
17 or a spectator venue or arena.

18 "A tourism destination attraction shall not include
19 a facility primarily devoted to the retail sale of goods; a
20 shopping center; a restaurant; a movie theater; a bowling
21 alley; a fitness center; a miniature golf course; or a
22 nightclub. Provided, however, that the capital costs of the
23 construction of a tourism destination attraction may include
24 the capital costs associated with the construction of any
25 retail establishment, restaurant or other portion of the
26 tourism destination attraction.; ~~or a recreational facility~~
27 ~~unless such facility is designed to attract visitors who would~~

1 ~~stay overnight in commercial lodging either at or near the~~
2 ~~facility while visiting the tourism destination attraction.~~
3 The term also does not include any gaming facility or
4 establishment that the Director of the Alabama Development
5 Office Secretary of the Department of Commerce deems to be
6 primarily serving the local community.

7 ~~"(19)~~(20) 1993 ACT. Act No. 93-851, H. 27 and Act
8 No. 93-852, H. 83 adopted at the 1993 First Special Session of
9 the Legislature of Alabama, as amended by Act No. 94-370, S.
10 559 adopted at the 1994 Regular Session of the Legislature of
11 Alabama.

12 "(b) The amendments made to this section by Act
13 2008-275 shall be effective for tax years and periods
14 beginning after December 31, 2011.

15 "§40-18-193.

16 "(a) It shall be a condition to the receipt of a
17 capital credit that:

18 "(1) For a qualifying project described in Section
19 40-18-190(a)(13)c. or f., not less than 50 jobs for new
20 employees at the qualifying project be provided commencing
21 with the date which is not later than one year after the
22 qualifying project is placed in service and that the average
23 wages for all new employees at the qualifying project be not
24 less than the base wage requirement by the date which is not
25 later than one year after the qualifying project is placed in
26 service and during each year during which all or any part of

1 the capital credit is available with respect to the qualifying
2 project.

3 "(2) For any qualifying project described in Section
4 40-18-190(a)(13)i., either of the following occur:

5 "a. Not less than ~~25~~ 50 jobs for new employees at
6 the qualifying project except as otherwise provided in this
7 subdivision and commencing with the date which is not later
8 than one year after the qualifying project is placed in
9 service and that the average wages for all new employees at
10 the qualifying project be not less than the base wage
11 requirement by the date which is not later than one year after
12 the qualifying project is placed in service and during each
13 year during which all or any part of the capital credit is
14 available with respect to the qualifying project.

15 "b. Not less than ~~10~~ 20 jobs for new employees at
16 the qualifying project which is located in a favored
17 geographic area and commencing with the date which is not
18 later than one year after the qualifying project is placed in
19 service and that the average wages for all new employees at
20 the qualifying project be not less than the base wage, as
21 defined in Section 40-18-190(a)(1), requirement by the date
22 which is not later than one year after the qualifying project
23 is placed in service and during each year during which all or
24 part of the capital credit is available with respect to the
25 qualifying project.

1 "~~(2)~~ (3) For any qualifying project other than a
2 qualifying project described in Sections 40-18-190(a)(13)c.✓
3 f. or ~~f.~~ i., either of the following occur:

4 "a. Not less than 20 jobs for new employees at a
5 qualifying project except as otherwise provided in this
6 subdivision and commencing with the date which is not later
7 than one year after the qualifying project is placed in
8 service and that the average wages for all new employees at
9 the qualifying project be not less than the base wage
10 requirement by the date which is not later than one year after
11 the qualifying project is placed in service and during each
12 year during which all or any part of the capital credit is
13 available with respect to the qualifying project.

14 "b. Not less than 15 jobs for new employees at the
15 qualifying project which is a small business addition be
16 provided commencing with the date which is not later than one
17 year after the qualifying project is placed in service and
18 that the average wages for all new employees at the qualifying
19 project be not less than the base wage requirement by the date
20 which is not later than one year after the qualifying project
21 is placed in service and during each year during which all or
22 any part of the capital credit is available with respect to
23 the qualifying project.

24 "c. Not less than five jobs for new employees at the
25 qualifying project which is located in a favored geographic
26 area and commencing with the date which is not later than one
27 year after the qualifying project is placed in service and

1 that the average wages for all new employees at the qualifying
2 project be not less than the base wage, as defined in Section
3 40-18-190(a) (1), requirement by the date which is not later
4 than one year after the qualifying project is placed in
5 service and during each year during which all or part of the
6 capital credit is available with respect to the qualifying
7 project.

8 "If an investing company closes or reduces its level
9 of employment at an existing facility in this state and within
10 two years following the closing or reduction in its level of
11 employment places a qualifying project in service, only the
12 number of new employees in excess of the number of employees
13 who worked at the existing facility at the time of the closure
14 or prior to the reduction in employment shall be deemed to be
15 new employees for purposes of this section.

16 "(b) The Legislature recognizes that one or more
17 entities may enter into a joint venture in the form of a
18 limited liability company, partnership, or other form of
19 business entity in connection with a qualifying project. It is
20 the intent of this article that the requirements of this
21 article respecting minimum capital costs and employment be
22 applied to the qualifying project and that the capital credit
23 be available and granted to those entities liable for or
24 against which the state income tax is allocated or assessed
25 with respect to the income generated by or arising out of the
26 qualifying project. It shall not be a requirement of this
27 article that the entity employing any new employees be the

1 same entity entitled to receive the capital credit so long as
2 the requirements of capital costs and new employees are
3 implemented and maintained with respect to the qualifying
4 project.

5 "(c) A change of ownership or assignment of interest
6 in any qualifying project shall not qualify the qualifying
7 project or any taxpayer to receive any additional capital
8 credits, and the purchaser, assignee, or successor of the
9 qualifying project or interests therein shall be entitled to
10 the capital credit upon the same conditions and for the same
11 period as the investing company or companies originally
12 entitled to the capital credit.

13 "(d) The Legislature recognizes that while certain
14 periods specified in this article with respect to the capital
15 credit are measured by calendar years it will be necessary for
16 the capital credit to be applied with respect to the tax years
17 of the recipients of the capital credit. Accordingly, the
18 department is hereby authorized to adopt regulations to
19 provide that the capital credit may be allocated to the tax
20 years of the recipient of the capital credit, including the
21 method of determining the pro rata amount of capital credit,
22 if any, available where the tax year of the recipient of the
23 capital credit will end subsequent to the end of any calendar
24 year period specified in this article.

25 "(e) A company shall be considered to have met the
26 employment and wage requirements for the portion of the year
27 following the date upon which such requirements are first met

1 and for each full year thereafter (such portion of a year and
2 each full year thereafter during the 20 year credit period is
3 hereinafter referred to as a "compliance year") if the
4 employment requirement is satisfied for at least 11/12 of each
5 compliance year and the wage requirement is met based on an
6 average determined over each compliance year.

7 "(f) (1) Any investing company that meets the
8 employment and wage requirements of this section by a date
9 which is not later than one year after the date on which the
10 qualifying project is placed in service, but fails to meet
11 such requirements in any subsequent compliance year, may still
12 claim the capital credit for each compliance year in which
13 such investing company again meets the employment and wage
14 requirements of this section. In no event, however, shall an
15 investing company be able to claim a capital credit in a
16 compliance year beginning: (i) after the third compliance year
17 (whether or not consecutive) in which the investing company
18 fails to meet the employment and wage requirements of this
19 section; or (ii) more than nineteen (19) years after the year
20 in which the qualifying project is first placed in service.

21 "(2) Any investing company that files a written
22 statement of intent (Form INT) with the department after May
23 21, 2009 and that meets the employment and wage requirements
24 of this section by a date which is not later than one year
25 after the date on which the qualifying project is placed in
26 service, but fails to meet such requirements in any subsequent
27 compliance year, shall forfeit a percentage of the capital

1 credits claimed in the prior five years. The forfeiture shall
2 equal 100 percent of the capital credits claimed in the year
3 immediately preceding the year in which the investing company
4 fails to maintain the employment and wage requirements of this
5 section. The forfeiture percentage shall be reduced by 20
6 percent for each successive prior year in the five year
7 forfeiture period. The forfeiture of capital credits shall be
8 treated in the same manner as the imposition of the tax
9 imposed by this chapter and shall be payable by the investing
10 company on the fifteenth day of the third month following the
11 close of the year in which the investing company failed to
12 meet the employment and wage requirements of this section."

13 Section 3. This act shall not apply to any gaming
14 facility.

15 Section 4. The provisions of this act are severable.
16 If any part of this act is declared invalid or
17 unconstitutional, that declaration shall not affect the part
18 which remains.

19 Section 5. This act shall become effective
20 immediately following its passage and approval by the
21 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
Education..... 22-MAR-12

Read for the second time and placed
on the calendar 3 amendments 24-APR-12

Read for the third time and passed
as amended..... 01-MAY-12

Yeas 99, Nays 0, Abstains 0

Greg Pappas
Clerk