

1 SB463
2 139121-6
3 By Senators Scofield, Dial, Ward, Blackwell, Brooks and
4 Waggoner
5 RFD: Finance and Taxation General Fund
6 First Read: 05-APR-12

1 SB463

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3
4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

22 Section 2. Sections 40-9B-3, 40-18-190, and
23 40-18-193, Code of Alabama 1975, are amended to read as
24 follows:

25 "§40-9B-3.

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

3 "(1) ABATE, ABATEMENT. A reduction or elimination of
4 a taxpayer's liability for tax or payments required to be made
5 in lieu thereof. An abatement of transaction taxes imposed
6 under Chapter 23 of this title, or payments required to be
7 made in lieu thereof, shall relieve the seller from the
8 obligation to collect and pay over the transaction tax as if
9 the sale were to a person exempt, to the extent of the
10 abatement, from the transaction tax.

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

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

22 "(4) DATA PROCESSING CENTER. An establishment at
23 which not less than 50 new jobs are located, and which is
24 engaged in the provision of complete processing and
25 specialized reports from data, the provision of automated data
26 processing and data entry services, the provision of an

1 infrastructure for hosting or data processing services, the
2 provision of specialized hosting activities, the provision of
3 application service provisioning, the provision of general
4 time-share mainframe facilities, or some combination of the
5 foregoing, without regard to whether any other activities are
6 conducted at the establishment.

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

15 "(6) 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, at which not less than 50 new jobs
20 are located.

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

23 "(8) INDUCEMENT. Refers to an agreement, or an
24 "inducement agreement," entered into between a private user
25 and a public authority or county or municipal government
26 and/or a resolution or other official action, an "inducement

1 resolution," "inducement letter," or "official action" adopted
2 by a public authority or county or municipal government, in
3 each case expressing, among other things, the present intent
4 of such public authority or county or municipal government to
5 issue bonds in connection with the private use property
6 therein described.

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

10 "(10) INDUSTRIAL OR RESEARCH ENTERPRISE.

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

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

3 "b. With respect to abatements granted in accordance
4 with Section 40-9B-9, and only with respect to such
5 abatements, "industrial or research enterprise" means any
6 trade or business described in the 2007 North American
7 Industry Classification System within Subsector 493
8 (Warehousing and Storage), Industry Number 488310 (Port and
9 Harbor Operations), or Industry Number 488320 (Marine Cargo
10 Handling), when such trade or business is conducted on
11 premises in which the Alabama State Port Authority has an
12 ownership, leasehold, or other possessory interest and such
13 premises are used as part of the operations of the Alabama
14 State Port Authority.

15 "c. "Industrial or research enterprise" includes the
16 above-described trades and business and any others as may
17 hereafter be reclassified in any subsequent publication of the
18 NAICS or similar industry classification system developed in
19 conjunction with the United States Department of Commerce or
20 Office of Management and Budget.

21 "d. "Industrial or research enterprise" also
22 includes any underground natural gas storage facility which is
23 located in the Gulf Opportunity Zone, as that phrase is
24 defined in the Gulf Opportunity Zone Act of 2005, developed
25 from existing geologic reservoirs, including, without

1 limitation, salt domes, and placed in service on or before
2 December 31, 2013.

3 "e. "Industrial or research enterprise" also
4 includes any plant, property, or facility that meets both of
5 the following:

6 "1. It produces electricity from:

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

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

12 "2. All or a portion of the plant, property, or
13 facility is owned by one or more of the following: A utility
14 described in Section 37-4-1(7)a., an entity organized under
15 the provisions of Chapter 6 of Title 37, or an authority both
16 organized and existing pursuant to the provisions of Chapter
17 50A of Title 11 and subject to the payments required to be
18 made in lieu of ad valorem, sales, use, license, and severance
19 taxes imposed by Section 11-50A-7, or an entity in which one
20 or more of the foregoing owns an interest.

21 "f. "Industrial or research enterprise" also
22 includes any headquarters facility.

23 "g. "Industrial or research enterprise" also
24 includes any data processing center.

25 "h. "Industrial or research enterprise" also
26 includes any research and development facility.

1 "i. "Industrial or research enterprise" also
2 includes any renewable energy facility.

3 "j. "Industrial or research enterprise" also
4 includes any tourism destination attraction.

5 "(11) MAJOR ADDITION. Any addition to an existing
6 industrial development property that equals the lesser of: 30
7 percent of the original cost of the industrial development
8 property or two million dollars (\$2,000,000). For purposes of
9 this subsection, the original cost of existing industrial
10 development property shall be the amount of industrial
11 development property with respect to which an abatement was
12 granted under this chapter when the property was constructed,
13 or if the existing industrial development property was
14 constructed before January 1, 1993, the maximum amount that
15 would have been allowed if the provisions of this chapter had
16 applied at the time it was constructed. Only property that
17 constitutes industrial development property shall be taken
18 into account in making the determination in the previous
19 sentence. Major addition shall include any addition costing at
20 least two million dollars (\$2,000,000) which constitutes an
21 industrial or research enterprise, regardless of whether added
22 to an existing industrial development property.

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

25 "a. Ten years from and after: 1. The date of initial
26 issuance by a county, city, or public authority of bonds to

1 finance any costs of a private use property, or 2. If no such
2 bonds are ever issued, the later of: (i) The date on which
3 title to the property was acquired by or vested in the county,
4 city, or public authority, or (ii) The date on which the
5 property is or becomes owned, for federal income tax purposes,
6 by a private user; or

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

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

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

19 "(15) PERSON. Includes any individual, partnership,
20 trust, estate, or corporation.

21 "(16) PRIVATE USER. Any individual, partnership, or
22 corporation organized for profit that is or will be treated as
23 the owner of private use property for federal income tax
24 purposes, any entity organized under Chapter 6 of Title 37,
25 and any authority both organized and existing pursuant to
26 Chapter 50A of Title 11 and subject to the payments required

1 to be made in lieu of ad valorem, sales, use, license, and
2 severance taxes imposed by Section 11-50A-7.

3 "(17) PRIVATE USE INDUSTRIAL PROPERTY. Private use
4 property that also constitutes industrial development
5 property.

6 "(18) PRIVATE USE PROPERTY. Any real and/or personal
7 property which is or will be treated as owned by a private
8 user for federal income tax purposes even though title may be
9 held by a public authority or municipal or county government;
10 any real and/or personal property which is owned by any entity
11 organized under Chapter 6 of Title 37; and any real and/or
12 personal property which is owned by any authority both
13 organized and existing pursuant to Chapter 50A of Title 11,
14 and subject to the payments required to be made in lieu of ad
15 valorem, sales, use, license, and severance taxes imposed by
16 Section 11-50A-7.

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

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

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

1 "a. Produces electricity or natural gas, in whole or
2 in part, from biofuels as such term is defined in Section
3 2-2-90(c)(2) or from renewable energy resources as such term
4 is defined in Section 40-18-1(30) with the exception that
5 hydropower production shall be excluded from such definition;
6 or

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

9 "(22) RESEARCH AND DEVELOPMENT FACILITY. An
10 establishment engaged in conducting original investigations
11 undertaken on a systematic basis to gain new knowledge or
12 applying research findings or other scientific knowledge to
13 create new or significantly improved products or processes, or
14 both.

15 "(23) STATEMENT OF INTENT. A written statement of
16 intent to claim an abatement provided in this chapter, or to
17 petition for local tax abatement, relating to an industrial or
18 research enterprise described in paragraph e. of subdivision
19 (10) of this subsection that is filed with the Department of
20 Revenue at any time prior to the date on which the industrial
21 or research enterprise described in paragraph e. of
22 subdivision (10) of this subsection is placed in service in
23 accordance with such procedures and on such form or forms as
24 may be prescribed by the Department of Revenue. Such statement
25 of intent shall contain a description of the industrial or
26 research enterprise described in paragraph e. of subdivision

1 (10) of this subsection; the date on which the acquisition,
2 construction, installation, or equipping of the industrial or
3 research enterprise described in paragraph e. of subdivision
4 (10) of this subsection was commenced or is expected to
5 commence; the actual or, if not known, the estimated capital
6 costs of the industrial or research enterprise described in
7 paragraph e. of subdivision (10) of this subsection; the
8 number of new employees to be employed at the industrial or
9 research enterprise described in paragraph e. of subdivision
10 (10) of this subsection; and any other information required by
11 the Department of Revenue.

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

24 "A tourism destination attraction shall not include
25 a facility primarily devoted to the retail sale of goods; a
26 shopping center; a restaurant; a movie theater; a bowling

1 alley; a fitness center; a miniature golf course; or a
2 nightclub. Provided, however, that the capital costs of the
3 construction of a tourism destination attraction may include
4 the capital costs associated with the construction of any
5 retail establishment, restaurant, or other portion of the
6 tourism destination attraction. The term also does not include
7 any gaming facility or establishment that the Director of the
8 Alabama Development Office deems to be serving the local
9 community.

10 "(b) The abatements of ad valorem taxes, and
11 payments in lieu thereof, allowed by amendments to this
12 section by Act 2008-275 shall become effective for projects
13 for which statements of intent are filed after December 31,
14 2011. No ad valorem taxes, or payments in lieu thereof, shall
15 be abated for periods prior to January 1, 2012. The other
16 abatements allowed by amendments made to this section by Act
17 2008-275 shall become effective after December 31, 2011.

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

26 "§40-18-190.

1 (a) The following terms shall have the following
2 meanings, respectively, when used in this article unless the
3 context clearly requires otherwise:

4 (1) BASE WAGE REQUIREMENT.

5 a. For qualifying projects in which an investing
6 company files a written statement of intent (Form INT) with
7 the department on or before May 21, 2009, "base wage
8 requirement" means either an average hourly wage of not less
9 than eight dollars (\$8) per hour or an average total
10 compensation of not less than ten dollars (\$10) per hour,
11 including benefits.

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

23 c. For qualifying projects that are located in a
24 favored geographic area and for which an investing company
25 files a written statement of intent (Form INT) with the
26 department after May 21, 2009, "base wage requirement" means

1 an average hourly wage, inclusive of all employees in Alabama,
2 of not less than the lesser of twelve dollars (\$12) per hour
3 (indexed annually in accordance with the manner provided in
4 Section 25-5-68) or the average hourly wage of the county
5 where the qualifying project is located (as reported annually
6 by the Department of Industrial Relations), both excluding
7 benefits.

8 "d. Notwithstanding the foregoing, wages of direct
9 processors of agriculture food products shall be subject to
10 the local labor market. In the event that reliable local labor
11 market statistics are not available, the department shall, by
12 regulation or ruling, establish a source of wage information
13 that best represents the average hourly wage rate in Alabama
14 for direct processors of agriculture food products.

15 "(2) CAPITAL COSTS. All costs and expenses incurred
16 by one or more investing companies in connection with the
17 acquisition, construction, installation and equipping of a
18 qualifying project during the period commencing with the date
19 on which such acquisition, construction, installation and
20 equipping commences and ending on the date on which the
21 qualifying project is placed in service, including, without
22 limitation all of the following:

23 "a. The costs of acquiring, constructing,
24 installing, equipping, and financing a qualifying project,
25 including all obligations incurred for labor and to
26 contractors, subcontractors, builders, and materialmen.

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

3 "c. The costs of contract bonds and of insurance of
4 all kinds that may be required or necessary during the
5 acquisition, construction, or installation of a qualifying
6 project.

7 "d. The costs of architectural and engineering
8 services, including test borings, surveys, estimates, plans
9 and specifications, preliminary investigations, environmental
10 mitigation and supervision of construction, as well as for the
11 performance of all the duties required by or consequent upon
12 the acquisition, construction, and installation of a
13 qualifying project.

14 "e. The costs associated with installation of
15 fixtures and equipment; surveys, including archaeological and
16 environmental surveys; site tests and inspections; subsurface
17 site work; excavation; removal of structures, roadways,
18 cemeteries, and other surface obstructions; filling, grading,
19 paving and provisions for drainage, storm water retention,
20 installation of utilities, including water, sewer, sewage
21 treatment, gas, electricity, communications, and similar
22 facilities; off-site construction of utility extensions to the
23 boundaries of the property.

24 "f. All other costs of a nature comparable to those
25 described, including, without limitation, all project costs

1 which are required to be capitalized for federal income tax
2 purposes pursuant to 26 U.S.C. § 263A.

3 "g. Costs otherwise defined as capital costs that
4 are incurred by the investing company where the investing
5 company is the lessee under a lease that: (1) has a term of
6 not less than five years, and (2) is characterized as a
7 capital lease for federal income tax purposes; provided, that
8 if the project is a headquarters facility, the lease may be
9 characterized as an operating lease for federal income tax
10 purposes in which event capital costs shall include the net
11 present value of the payments made by the investing company
12 under the lease computed using the applicable federal rate for
13 the month in which the qualifying project is placed in service
14 and for the term most closely approximating the term of the
15 lease. Capital costs shall not include property owned or
16 leased by the investing company or a related party before the
17 commencement of the acquisition, construction, installation or
18 equipping of the qualifying project unless such property was
19 physically located outside the state for a period of at least
20 one year prior to the date on which the qualifying project was
21 placed in service.

22 "h. Costs either paid or incurred by (i) a public
23 industrial development board or authority, city, or county, or
24 other public corporation or political subdivision (a "public
25 entity") for the benefit of a qualifying project where such
26 costs are treated as costs paid by an investing company with

1 respect to the qualifying project for federal income tax
2 purposes (such costs shall not include amounts contributed by
3 a public entity to a qualifying project as a capital
4 contribution or gift except to the extent that an investing
5 company has cost basis in the contribution or gift for federal
6 income tax purposes); or (ii) a related party to an investing
7 company to the extent such costs are included in or taken into
8 account in determining the investing company's federal income
9 tax basis in the qualifying project, whether or not incurred
10 by an investing company.

11 "(3) CAPITAL CREDIT. An annual amount equal to up to
12 five percent of the capital costs of the qualifying project,
13 such amount to be credited or allowed in accordance with
14 Section 40-18-194 and Section 40-18-195 hereof and other
15 provisions of law, against the state income tax or financial
16 institution excise tax, as provided in Section 40-18-194,
17 liability generated by or arising out of the qualifying
18 project in each of the 20 years commencing with the year
19 during which the qualifying project is placed in service and
20 continuing for 19 consecutive years thereafter.

21 "(4) DATA PROCESSING CENTER. An establishment
22 engaged in the provision of complete processing and
23 specialized reports from data, the provision of automated data
24 processing and data entry services, the provision of an
25 infrastructure for hosting or data processing services, the
26 provision of specialized hosting activities, the provision of

1 application service provisioning, the provision of general
2 time-share mainframe facilities, or some combination of the
3 foregoing, without regard to whether any other activities are
4 conducted at the establishment.

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

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

8 "a. Any area designated or created as an enterprise
9 zone by law or that is governed by the Alabama Enterprise Zone
10 Act.

11 "b. 1. Any Alabama county which is considered to be
12 less developed. A county is considered to be less developed if
13 it has been found to be less developed by the Alabama
14 Department of Industrial Relations using the most current data
15 available from the United States Departments of Labor or
16 Commerce, the United States Bureau of the Census, or any other
17 federal or state agency, and which finding shall be made
18 immediately upon passage of Act 2001-965 and not later than
19 January 1 of each year thereafter.

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

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

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

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

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

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

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

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

8 "(7) HEADQUARTERS FACILITIES.

9 "a. For qualifying projects in which an investing
10 company files a written statement of intent (Form INT) with
11 the department on or before May 21, 2009, "headquarters
12 facilities" means a facility which will serve as the national,
13 regional or state headquarters for an investing company that
14 conducts significant business operations outside the state and
15 will serve as the principal office of the principal operating
16 officer of the qualifying project. For purposes of this
17 Article 7, the term "principal operating officer" is defined
18 as the person with chief responsibility for the daily business
19 operations of the qualifying project.

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

1 "(8) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.

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

20 "(9) INVESTING COMPANY. Any corporation,
21 partnership, limited liability company, proprietorship, trust
22 or other business entity, regardless of form, making a
23 qualified investment.

24 "(10) NEW EMPLOYEES. Those persons who have not been
25 previously employed at the site on which the qualifying
26 project is or will be located or by an investing company or

1 companies in the state; will be employed full-time at the
2 qualifying project; and will be subject to the personal income
3 tax imposed by Section 40-18-2, upon commencement of
4 employment at the qualifying project.

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

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

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

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

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

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

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

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

10 "1. One hundred million dollars (\$100,000,000), if
11 the predominant trade or business activity conducted will be
12 the production of electricity from alternative energy
13 resources.

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

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

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

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

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

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

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

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

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

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

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

17 "1. Twenty million dollars (\$20,000,000) if the
18 tourism destination attraction is not located in a favored
19 geographic area.

20 "2. Five million dollars (\$5,000,000) if the tourism
21 destination attraction is located in a favored geographic
22 area.

23 "(14) RELATED PARTY. A person or entity that bears a
24 relationship to an investing company described in Section
25 267(b), (c), or (e) of the Internal Revenue Code of 1986, as
26 amended.

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

3 "a. Produces electricity or natural gas, in whole or
4 in part, from biofuels as such term is defined in Section
5 2-2-90(c) (2) or from renewable energy resources as such term
6 is defined in Section 40-18-1(30) with the exception that
7 hydropower production shall be excluded from such definition;
8 or

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

11 "(16) RESEARCH AND DEVELOPMENT FACILITY. An
12 establishment engaged in conducting original investigations
13 undertaken on a systematic basis to gain new knowledge or
14 applying research findings or other scientific knowledge to
15 create new or significantly improved products or processes, or
16 both.

17 "(17) SMALL BUSINESS ADDITION. Any land, building or
18 other improvement, and all real and personal properties deemed
19 necessary or useful in connection therewith, whether or not
20 previously in existence, to be used as a part of any existing
21 facility of a business located in the state that, prior to the
22 date on which the addition is placed in service, had 100 or
23 fewer full-time employees.

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

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

13 "A tourism destination attraction shall not include
14 a facility primarily devoted to the retail sale of goods; a
15 shopping center; a restaurant; a movie theater; a bowling
16 alley; a fitness center; a miniature golf course; or a
17 nightclub. Provided, however, that the capital costs of the
18 construction of a tourism destination attraction may include
19 the capital costs associated with the construction of any
20 retail establishment, restaurant, or other portion of the
21 tourism destination attraction. The term also does not include
22 any gaming facility or establishment that the Director of the
23 Alabama Development Office deems to be serving the local
24 community.

25 "~~(19)~~(20) 1993 ACT. Act No. 93-851, H. 27 and Act
26 No. 93-852, H. 83 adopted at the 1993 First Special Session of

1 the Legislature of Alabama, as amended by Act No. 94-370, S.
2 559 adopted at the 1994 Regular Session of the Legislature of
3 Alabama.

4 "(b) The amendments made to this section by Act
5 2008-275 shall be effective for tax years and periods
6 beginning after December 31, 2011.

7 "§40-18-193.

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

10 "(1) For a qualifying project described in Section
11 40-18-190(a)(13)c. or f., not less than 50 jobs for new
12 employees at the qualifying project be provided commencing
13 with the date which is not later than one year after the
14 qualifying project is placed in service and that the average
15 wages for all new employees at the qualifying project be not
16 less than the base wage requirement by the date which is not
17 later than one year after the qualifying project is placed in
18 service and during each year during which all or any part of
19 the capital credit is available with respect to the qualifying
20 project.

21 "(2) For any qualifying project described in Section
22 40-18-190(a)(13)i., either of the following occur:

23 "a. Not less than 50 jobs for new employees at the
24 qualifying project except as otherwise provided in this
25 subdivision and commencing with the date which is not later
26 than one year after the qualifying project is placed in

1 service and that the average wages for all new employees at
2 the qualifying project be not less than the base wage
3 requirement by the date which is not later than one year after
4 the qualifying project is placed in service and during each
5 year during which all or any part of the capital credit is
6 available with respect to the qualifying project.

7 "b. Not less than 20 jobs for new employees at the
8 qualifying project which is located in a favored geographic
9 area and commencing with the date which is not later than one
10 year after the qualifying project is placed in service and
11 that the average wages for all new employees at the qualifying
12 project be not less than the base wage, as defined in Section
13 40-18-190(a)(1), requirement by the date which is not later
14 than one year after the qualifying project is placed in
15 service and during each year during which all or part of the
16 capital credit is available with respect to the qualifying
17 project.

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

21 "a. Not less than 20 jobs for new employees at a
22 qualifying project except as otherwise provided in this
23 subdivision and commencing with the date which is not later
24 than one year after the qualifying project is placed in
25 service and that the average wages for all new employees at
26 the qualifying project be not less than the base wage

1 requirement by the date which is not later than one year after
2 the qualifying project is placed in service and during each
3 year during which all or any part of the capital credit is
4 available with respect to the qualifying project.

5 "b. Not less than 15 jobs for new employees at the
6 qualifying project which is a small business addition be
7 provided commencing with the date which is not later than one
8 year after the qualifying project is placed in service and
9 that the average wages for all new employees at the qualifying
10 project be not less than the base wage requirement by the date
11 which is not later than one year after the qualifying project
12 is placed in service and during each year during which all or
13 any part of the capital credit is available with respect to
14 the qualifying project.

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

1 "If an investing company closes or reduces its level
2 of employment at an existing facility in this state and within
3 two years following the closing or reduction in its level of
4 employment places a qualifying project in service, only the
5 number of new employees in excess of the number of employees
6 who worked at the existing facility at the time of the closure
7 or prior to the reduction in employment shall be deemed to be
8 new employees for purposes of this section.

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

25 "(c) A change of ownership or assignment of interest
26 in any qualifying project shall not qualify the qualifying

1 project or any taxpayer to receive any additional capital
2 credits, and the purchaser, assignee, or successor of the
3 qualifying project or interests therein shall be entitled to
4 the capital credit upon the same conditions and for the same
5 period as the investing company or companies originally
6 entitled to the capital credit.

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

19 "(e) A company shall be considered to have met the
20 employment and wage requirements for the portion of the year
21 following the date upon which such requirements are first met
22 and for each full year thereafter (such portion of a year and
23 each full year thereafter during the 20 year credit period is
24 hereinafter referred to as a "compliance year") if the
25 employment requirement is satisfied for at least 11/12 of each

1 compliance year and the wage requirement is met based on an
2 average determined over each compliance year.

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

17 "(2) Any investing company that files a written
18 statement of intent (Form INT) with the department after May
19 21, 2009 and that meets the employment and wage requirements
20 of this section by a date which is not later than one year
21 after the date on which the qualifying project is placed in
22 service, but fails to meet such requirements in any subsequent
23 compliance year, shall forfeit a percentage of the capital
24 credits claimed in the prior five years. The forfeiture shall
25 equal 100 percent of the capital credits claimed in the year
26 immediately preceding the year in which the investing company

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

10 Section 3. This act shall not apply to any gaming
11 facility.

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

16 Section 5. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Finance and Taxation General Fund ... 05-APR-12

Read for the second time and placed on the calen-
dar 2 amendments..... 19-APR-12

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

Yeas 28
Nays 0

Patrick Harris
Secretary