

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

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8 SYNOPSIS: This bill would allow granting authorities
9 to abate certain ad valorem taxes and construction
10 related transaction taxes for tourism destination
11 attractions located in the State of Alabama by
12 expanding the definition of industrial or research
13 enterprises to include tourism destination
14 attractions.

15 This bill would also provide that tourism
16 destination attractions are eligible for capital
17 credits.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT

22
23 To amend Sections 40-9B-3, 40-18-190, and 40-18-193,
24 Code of Alabama 1975, to allow the governing body of a
25 municipality, county, or a public industrial authority to
26 grant abatements of certain ad valorem taxes and construction

1 related transaction taxes to private users of tourism
2 destination attractions for a period of up to 10 years and to
3 enable tourism destination attractions to qualify for capital
4 credits.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

11 "§40-9B-3.

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

14 "(1) ABATE, ABATEMENT. A reduction or elimination of
15 a taxpayer's liability for tax or payments required to be made
16 in lieu thereof. An abatement of transaction taxes imposed
17 under Chapter 23 of this title, or payments required to be
18 made in lieu thereof, shall relieve the seller from the
19 obligation to collect and pay over the transaction tax as if
20 the sale were to a person exempt, to the extent of the
21 abatement, from the transaction tax.

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

24 "(3) CONSTRUCTION RELATED TRANSACTION TAXES. The
25 transaction taxes imposed by Chapter 23 of this title, or
26 payments required to be made in lieu thereof, on tangible

1 personal property and taxable services incorporated into an
2 industrial development property, the cost of which may be
3 added to capital account with respect to the property,
4 determined without regard to any rule which permits
5 expenditures properly chargeable to capital account to be
6 treated as current expenses.

7 "(4) DATA PROCESSING CENTER. An establishment at
8 which not less than 50 new jobs are located, and which is
9 engaged in the provision of complete processing and
10 specialized reports from data, the provision of automated data
11 processing and data entry services, the provision of an
12 infrastructure for hosting or data processing services, the
13 provision of specialized hosting activities, the provision of
14 application service provisioning, the provision of general
15 time-share mainframe facilities, or some combination of the
16 foregoing, without regard to whether any other activities are
17 conducted at the establishment.

18 "(5) EDUCATION TAXES. Ad valorem taxes, or payments
19 required to be made in lieu thereof, that must, pursuant to
20 the Constitution of Alabama of 1901, as amended, legislative
21 act, or the resolution or other action of the governing board
22 authorizing the tax, be used for educational purposes or for
23 capital improvements for education and local construction
24 related transaction taxes levied for educational purposes or
25 for capital improvements for education.

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

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

9 "(8) INDUCEMENT. Refers to an agreement, or an
10 "inducement agreement," entered into between a private user
11 and a public authority or county or municipal government
12 and/or a resolution or other official action, an "inducement
13 resolution," "inducement letter," or "official action" adopted
14 by a public authority or county or municipal government, in
15 each case expressing, among other things, the present intent
16 of such public authority or county or municipal government to
17 issue bonds in connection with the private use property
18 therein described.

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

22 "(10) INDUSTRIAL OR RESEARCH ENTERPRISE.

23 "a. Any trade or business described in the 2007
24 North American Industry Classification System, promulgated by
25 the Executive Office of the President of the United States,
26 Office of Management and Budget, Sectors 31 (other than

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

15 "b. With respect to abatements granted in accordance
16 with Section 40-9B-9, and only with respect to such
17 abatements, "industrial or research enterprise" means any
18 trade or business described in the 2007 North American
19 Industry Classification System within Subsector 493
20 (Warehousing and Storage), Industry Number 488310 (Port and
21 Harbor Operations), or Industry Number 488320 (Marine Cargo
22 Handling), when such trade or business is conducted on
23 premises in which the Alabama State Port Authority has an
24 ownership, leasehold, or other possessory interest and such
25 premises are used as part of the operations of the Alabama
26 State Port Authority.

1 "c. "Industrial or research enterprise" includes the
2 above-described trades and business and any others as may
3 hereafter be reclassified in any subsequent publication of the
4 NAICS or similar industry classification system developed in
5 conjunction with the United States Department of Commerce or
6 Office of Management and Budget.

7 "d. "Industrial or research enterprise" also
8 includes any underground natural gas storage facility which is
9 located in the Gulf Opportunity Zone, as that phrase is
10 defined in the Gulf Opportunity Zone Act of 2005, developed
11 from existing geologic reservoirs, including, without
12 limitation, salt domes, and placed in service on or before
13 December 31, 2013.

14 "e. "Industrial or research enterprise" also
15 includes any plant, property, or facility that meets both of
16 the following:

17 "1. It produces electricity from:

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

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

23 "2. All or a portion of the plant, property, or
24 facility is owned by one or more of the following: A utility
25 described in Section 37-4-1(7)a., an entity organized under
26 the provisions of Chapter 6 of Title 37, or an authority both

1 organized and existing pursuant to the provisions of Chapter
2 50A of Title 11 and subject to the payments required to be
3 made in lieu of ad valorem, sales, use, license, and severance
4 taxes imposed by Section 11-50A-7, or an entity in which one
5 or more of the foregoing owns an interest.

6 "f. "Industrial or research enterprise" also
7 includes any headquarters facility.

8 "g. "Industrial or research enterprise" also
9 includes any data processing center.

10 "h. "Industrial or research enterprise" also
11 includes any research and development facility.

12 "i. "Industrial or research enterprise" also
13 includes any renewable energy facility.

14 "j. "Industrial or research enterprise" also
15 includes any tourism destination attraction.

16 "(11) MAJOR ADDITION. Any addition to an existing
17 industrial development property that equals the lesser of: 30
18 percent of the original cost of the industrial development
19 property or two million dollars (\$2,000,000). For purposes of
20 this subsection, the original cost of existing industrial
21 development property shall be the amount of industrial
22 development property with respect to which an abatement was
23 granted under this chapter when the property was constructed,
24 or if the existing industrial development property was
25 constructed before January 1, 1993, the maximum amount that
26 would have been allowed if the provisions of this chapter had

1 applied at the time it was constructed. Only property that
2 constitutes industrial development property shall be taken
3 into account in making the determination in the previous
4 sentence. Major addition shall include any addition costing at
5 least two million dollars (\$2,000,000) which constitutes an
6 industrial or research enterprise, regardless of whether added
7 to an existing industrial development property.

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

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

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

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

24 "(14) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem
25 taxes, or payments required to be made in lieu thereof,
26 imposed by the state, counties, municipalities, and other

1 taxing jurisdictions of Alabama that are not required to be
2 used for educational purposes or for capital improvements for
3 education.

4 "(15) PERSON. Includes any individual, partnership,
5 trust, estate, or corporation.

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

14 "(17) PRIVATE USE INDUSTRIAL PROPERTY. Private use
15 property that also constitutes industrial development
16 property.

17 "(18) PRIVATE USE PROPERTY. Any real and/or personal
18 property which is or will be treated as owned by a private
19 user for federal income tax purposes even though title may be
20 held by a public authority or municipal or county government;
21 any real and/or personal property which is owned by any entity
22 organized under Chapter 6 of Title 37; and any real and/or
23 personal property which is owned by any authority both
24 organized and existing pursuant to Chapter 50A of Title 11,
25 and subject to the payments required to be made in lieu of ad

1 valorem, sales, use, license, and severance taxes imposed by
2 Section 11-50A-7.

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

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

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

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

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

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

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

24 "(24) TOURISM DESTINATION ATTRACTION. A commercial
25 enterprise which is open to the public not less than 120 days
26 during a calendar year and is designed to attract visitors

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

10 "A tourism destination attraction shall not include
11 a facility primarily devoted to the retail sale of goods; a
12 shopping center; a restaurant; a movie theater; a bowling
13 alley; a fitness center; a miniature golf course; a nightclub;
14 or a recreational facility unless such facility is designed to
15 attract visitors who would stay overnight in commercial
16 lodging either at or near the facility while visiting the
17 tourism destination attraction. The term also does not include
18 any gaming facility or establishment that the Director of the
19 Alabama Development Office deems to be primarily serving the
20 local community.

21 (b) The abatements of ad valorem taxes, and
22 payments in lieu thereof, allowed by amendments to this
23 section by Act 2008-275 shall become effective for projects
24 for which statements of intent are filed after December 31,
25 2011. No ad valorem taxes, or payments in lieu thereof, shall
26 be abated for periods prior to January 1, 2012. The other

1 abatements allowed by amendments made to this section by Act
2 2008-275 shall become effective after December 31, 2011.

3 "§40-18-190.

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

7 "(1) BASE WAGE REQUIREMENT.

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

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

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

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

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

1 "a. The costs of acquiring, constructing,
2 installing, equipping, and financing a qualifying project,
3 including all obligations incurred for labor and to
4 contractors, subcontractors, builders, and materialmen.

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

7 "c. The costs of contract bonds and of insurance of
8 all kinds that may be required or necessary during the
9 acquisition, construction, or installation of a qualifying
10 project.

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

18 "e. The costs associated with installation of
19 fixtures and equipment; surveys, including archaeological and
20 environmental surveys; site tests and inspections; subsurface
21 site work; excavation; removal of structures, roadways,
22 cemeteries, and other surface obstructions; filling, grading,
23 paving and provisions for drainage, storm water retention,
24 installation of utilities, including water, sewer, sewage
25 treatment, gas, electricity, communications, and similar

1 facilities; off-site construction of utility extensions to the
2 boundaries of the property.

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

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

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

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

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

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

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

14 "a. Any area designated or created as an enterprise
15 zone by law or that is governed by the Alabama Enterprise Zone
16 Act.

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

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

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

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

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

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

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

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

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

15 "(7) HEADQUARTERS FACILITIES.

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

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

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

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

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

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

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

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

22 "a. A project the capital costs of which are not
23 less than two million dollars (\$2,000,000), and at which the
24 predominant trade or business activity conducted will
25 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) if the tourism
25 destination attraction is not located in a favored geographic
26 area.

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

1 previously in existence, to be used as a part of any existing
2 facility of a business located in the state that, prior to the
3 date on which the addition is placed in service, had 100 or
4 fewer full-time employees.

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

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

19 "A tourism destination attraction shall not include
20 a facility primarily devoted to the retail sale of goods; a
21 shopping center; a restaurant; a movie theater; a bowling
22 alley; a fitness center; a miniature golf course; a nightclub;
23 or a recreational facility unless such facility is designed to
24 attract visitors who would stay overnight in commercial
25 lodging either at or near the facility while visiting the
26 tourism destination attraction. The term also does not include

1 any gaming facility or establishment that the Director of the
2 Alabama Development Office deems to be primarily serving the
3 local community.

4 "~~(19)~~(20) 1993 ACT. Act No. 93-851, H. 27 and Act
5 No. 93-852, H. 83 adopted at the 1993 First Special Session of
6 the Legislature of Alabama, as amended by Act No. 94-370, S.
7 559 adopted at the 1994 Regular Session of the Legislature of
8 Alabama.

9 "(b) The amendments made to this section by Act
10 2008-275 shall be effective for tax years and periods
11 beginning after December 31, 2011.

12 "§40-18-193.

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

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

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

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

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

24 ~~"(2)~~ (3) For any qualifying project other than a
25 qualifying project described in Sections 40-18-190(a)(13)c.,
26 f., or f. i., either of the following occur:

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

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

21 "c. Not less than five jobs for new employees at the
22 qualifying project which is located in a favored geographic
23 area and commencing with the date which is not later than one
24 year after the qualifying project is placed in service and
25 that the average wages for all new employees at the qualifying
26 project be not less than the base wage, as defined in Section

1 40-18-190(a) (1), requirement by the date which is not later
2 than one year after the qualifying project is placed in
3 service and during each year during which all or part of the
4 capital credit is available with respect to the qualifying
5 project.

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

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

1 the requirements of capital costs and new employees are
2 implemented and maintained with respect to the qualifying
3 project.

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

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

24 "(e) A company shall be considered to have met the
25 employment and wage requirements for the portion of the year
26 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

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

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

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

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