

1 SB48  
2 133693-3  
3 By Senators Orr and Holtzclaw  
4 RFD: Finance and Taxation General Fund  
5 First Read: 07-FEB-12  
6 PFD: 10/13/2011

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing law, certain new and  
9 expanding businesses may qualify for an income tax  
10 capital credit of up to five percent (5%) of the  
11 capital costs of a qualifying project in each of  
12 the 20 years, commencing with the year during which  
13 the qualifying project is placed into service and  
14 continuing for 19 consecutive years thereafter. Any  
15 unused capital credit may not be carried forward to  
16 another tax year.

17 This bill would allow for an extension of  
18 the time period in which certain capital credits  
19 may be claimed and will allow unused capital  
20 credits for certain qualifying projects to be  
21 carried forward.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
26

1           To amend Section 40-18-194, Code of Alabama 1975,  
2 relating to an income tax capital credit for qualifying  
3 projects of new businesses and business expansions; to allow  
4 for an extension of the time period in which certain capital  
5 credits may be claimed and will also allow the credit to be  
6 carried forward from one (1) to four (4) years depending upon  
7 the amount of the capital costs of the project.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9           Section 1. Section 40-18-194, Code of Alabama 1975,  
10 is amended to read as follows:

11           "§40-18-194.

12           (a) The Legislature recognizes that a substantial  
13 number of businesses are organized as limited liability  
14 companies, partnerships, and other types of business entities  
15 and that certain business entities, organized as corporations,  
16 elect to be treated as "S" corporations under federal and  
17 state tax laws, and that it is essential that the capital  
18 credit amount shall be available on a pass-through basis in  
19 the manner hereinafter provided.

20           (b) Each investing company, or its shareholders,  
21 partners, members, owners, or beneficiaries shall be entitled  
22 to the capital credit for each tax year of an investing  
23 company with respect to which a capital credit is provided  
24 pursuant to this article. The capital credit shall be allowed  
25 as follows:

26           (1) The owner of an investing company which is a  
27 proprietorship shall receive a credit against the individual

1 income tax levied by Section 40-18-5 that otherwise would be  
2 owed to the state in any year by the owner with respect to the  
3 income of the investing company generated by or arising out of  
4 the qualifying project.

5 (2) An investing company which is an Alabama C  
6 corporation as defined in Section 40-18-160, or which is an  
7 Alabama S corporation and which is subject to taxation under  
8 Section 40-18-174, or Section 40-18-175, shall receive a  
9 credit against the corporate income tax levied by Section  
10 40-18-31 or by Section 40-18-174 or Section 40-18-175, that  
11 otherwise would be owed to the state in any year by the  
12 investing company with respect to the income generated by or  
13 arising out of the qualifying project.

14 (3) The shareholders of an investing company which  
15 is an Alabama S corporation as defined in Section 40-18-160,  
16 and whose taxable income is subject to determination under  
17 Section 40-18-161, each shall receive a credit against the  
18 individual income tax levied by Section 40-18-5 that otherwise  
19 would be owed to the state in any year by each shareholder of  
20 the investing company with respect to income of the investing  
21 company generated by or arising out of the qualifying project.

22 (4) The partners, members, or owners of an investing  
23 company, the income of which is subject to taxation under  
24 Section 40-18-24, each shall receive a credit against the  
25 corporate income tax levied by Section 40-18-31, or against  
26 the individual income tax levied by Section 40-18-5, whichever  
27 is applicable to each such partner, member, or owner that

1 otherwise would be owed to the state in any year by each  
2 partner, member, or owner of the investing company with  
3 respect to income of the investing company generated by or  
4 arising out of the qualifying project.

5 (5) An investing company which is a trust or estate  
6 having income subject to taxation under Section 40-18-25(c)  
7 shall receive a credit against the income tax levied by  
8 Section 40-18-5 that otherwise would be owed to the state in  
9 any year by the investing company on the income generated by  
10 or arising out of the qualifying project.

11 (6) The beneficiaries of an investing company which  
12 is a trust or estate the income of which is subject to  
13 taxation under Section 40-18-25(d) each shall receive a credit  
14 against the corporate income tax levied by Section 40-18-31,  
15 or against the individual income tax levied by Section  
16 40-18-5, whichever is applicable to each such beneficiary,  
17 that otherwise would be owed to the state in any year by each  
18 beneficiary of the investing company with respect to income of  
19 the investing company generated by or arising out of the  
20 qualifying project.

21 (7) A shareholder, partner, member, owner, or  
22 beneficiary which is eligible to receive a credit under  
23 subdivision (3), (4), or (6) of this subsection and which is  
24 an Alabama S corporation, or which has income which is subject  
25 to taxation under Section 40-18-24 or Section 40-18-25(d),  
26 solely for purposes of the application of this subsection,

1 shall be treated as though the shareholder, partner, member,  
2 owner, or beneficiary were also an investing company.

3 (8)a. An investing company which is a financial  
4 institution as defined in Section 40-16-1 shall receive a  
5 credit against the financial institution excise tax levied by  
6 Section 40-16-4 that otherwise would be owed to the state in  
7 any year by the investing company with respect to the income  
8 generated by or arising out of the qualifying project which is  
9 a data processing center, is a headquarters facility, or is  
10 described in the 2007 North American Industry Classification  
11 System National Industry 561422 (other than establishments  
12 that originate telephone calls). To receive the capital credit  
13 authorized by this paragraph (8)a., Section 40-18-193 shall be  
14 complied with. Further, the financial institution must be the  
15 investing company or it must own, directly or indirectly, at  
16 least 50 percent of the investing company. If the financial  
17 institution is a shareholder, partner, member, owner, or  
18 beneficiary of an investing company which is not itself  
19 subject to taxation, the financial institution shall be  
20 entitled to a capital credit corresponding to its relative  
21 ownership interest in the investing company, subject to the 50  
22 percent ownership requirement of the immediately preceding  
23 sentence.

24 b. In making the report required by Section  
25 40-16-6(d), a financial institution receiving the capital  
26 credit authorized in paragraph (8)a. shall not take into  
27 account the qualifying project.

1           (9) The capital credit allowed under this subsection  
2 for any tax year of an investing company shall not exceed the  
3 aggregate amount which otherwise would be due from the  
4 investing company, its shareholders, partners, members,  
5 owners, or beneficiaries to the state in tax with respect to  
6 the income of the investing company generated by or arising  
7 out of the qualifying project, determined after the  
8 application of all other deductions, losses, or credits  
9 permitted under Titles 40 and 41, for the taxable year, and  
10 determined by applying the maximum rate applicable to  
11 individuals under Section 40-18-5, or the rate applicable to  
12 corporations under Section 40-18-31, or the rate applicable to  
13 financial institutions under Section 40-16-4, as the case may  
14 be. Notwithstanding the foregoing, the capital credit allowed  
15 under this subsection shall not exceed 60 percent of the  
16 aggregate amount which would otherwise be due from the  
17 investing company, in the case of a qualifying project for the  
18 production of electricity from coal gasification or  
19 liquefaction or advanced fossil-based generation, as such  
20 terms are defined in Section 40-18-1, or hydropower  
21 production, or 80 percent of the aggregate amount which would  
22 otherwise be due, in the case of a qualifying project  
23 described in Section 40-18-190(a)(13)e which produces  
24 electricity from any other type of alternative energy  
25 resource.

26           (10) ~~a. In~~ Except as provided in subsection b.  
27 below, in no event may any amount described in this subsection

1 be carried forward or back by any investing company,  
2 shareholders, partners, members, owners, or beneficiaries with  
3 respect to a prior or subsequent year.

4 b. If the qualifying project has capital costs of at  
5 least one hundred million dollars and provides not less than  
6 one hundred jobs for new employees, the capital credit may be  
7 carried forward for a maximum of four (4) taxable years,  
8 depending on the amount of capital costs. Amounts described in  
9 this subsection may only be carried forward by any investing  
10 company, shareholders, partners, members, owners, or  
11 beneficiaries as follows:

12 (1) If the capital costs are at least four hundred  
13 million dollars, the capital credit may be carried forward for  
14 a maximum of four (4) taxable years.

15 (2) If the capital costs are at least three hundred  
16 million dollars but less than four hundred million dollars,  
17 the capital credit may be carried forward for a maximum of  
18 three (3) taxable years.

19 (3) If the capital costs are at least two hundred  
20 million dollars but less than three hundred million dollars,  
21 the capital credit may be carried forward for a maximum of two  
22 (2) taxable years.

23 (4) If the capital costs are at least one hundred  
24 million dollars but less than two hundred million dollars, the  
25 capital credit may be carried forward for a maximum of one (1)  
26 taxable year.

1                   (5) If the capital costs are less than one hundred  
2 million dollars, the capital credit may not be carried  
3 forward.

4                   c. Any provisions of the law to the contrary  
5 notwithstanding any entity described in subsection b. may  
6 delay the initial utilization of the capital credit for up to  
7 three years after the qualifying project is placed in service,  
8 after which time the twenty year period for the credit shall  
9 begin.

10                   (11) Any shareholder, partner, member, owner, or  
11 beneficiary of an investing company may elect annually to use  
12 his or her allowable portion of the tax credit created by this  
13 article as a nonrefundable estimated tax payment against his  
14 or her individual income tax liability. If a taxpayer makes an  
15 annual election to use the aforementioned credit as a  
16 nonrefundable estimated payment, the taxpayer shall compute  
17 the amount of the credit as though it were a credit, subject  
18 to all the requirements and limitations provided by law for  
19 the credit, but shall use the amount computed as a  
20 nonrefundable estimated payment and shall not use the same  
21 amount as a credit. In no event shall this provision be  
22 construed to allow the credit or nonrefundable estimated tax  
23 payment to expand the 20-year limitation of the credit or  
24 estimated tax payment. In no event shall a credit used as  
25 nonrefundable estimated payment exceed the amount that would  
26 be available if the credit were not used as a nonrefundable  
27 estimate payment.

1                   (c) The amendments made to this section by Act  
2                   2008-275 shall be effective for tax years and periods  
3                   beginning after December 31, 2011.

4                   Section 2. This act shall become effective for all  
5                   qualifying projects placed in service after December 31, 2011,  
6                   following its passage and approval by the Governor, or its  
7                   otherwise becoming law.