

1 HB599
2 151460-1
3 By Representatives Williams (P), Mask, McCutcheon,
4 Johnson (W), Ball, Patterson, Sanderford, Hall and Hubbard (M)
5 RFD: Economic Development and Tourism
6 First Read: 10-APR-13

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8 SYNOPSIS: Under existing law, if a qualifying project
9 has capital costs of at least one hundred million
10 dollars and provides not less than one hundred jobs
11 for new employees, the capital credit may be
12 carried forward for a maximum of four taxable
13 years, depending on the amount of capital costs.

14 This bill would provide a carry forward
15 period of five years for projects exceeding fifty
16 million dollars in capital costs and fifty jobs for
17 new employees.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Section 40-18-194, Code of Alabama 1975, as
24 further amended by Act 2012-385, 2012 Regular Session (Acts
25 2012 p. ____), relating to an income tax capital credit for
26 qualifying projects of new businesses and business expansions;
27 to provide a carry forward period of five years for projects

1 exceeding fifty million dollars in capital costs and fifty
2 jobs for new employees.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 40-18-194, Code of Alabama 1975,
5 as amended by Act 2012-385, 2012 Regular Session (Acts 2012 p.
6 _____), is amended to read as follows:

7 "§40-18-194.

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

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

22 "(1) The owner of an investing company which is a
23 proprietorship shall receive a credit against the individual
24 income tax levied by Section 40-18-5 that otherwise would be
25 owed to the state in any year by the owner with respect to the
26 income of the investing company generated by or arising out of
27 the qualifying project.

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

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

18 "(4) The partners, members, or owners of an
19 investing company, the income of which is subject to taxation
20 under Section 40-18-24, each shall receive a credit against
21 the corporate income tax levied by Section 40-18-31, or
22 against the individual income tax levied by Section 40-18-5,
23 whichever is applicable to each such partner, member, or owner
24 that otherwise would be owed to the state in any year by each
25 partner, member, or owner of the investing company with
26 respect to income of the investing company generated by or
27 arising out of the qualifying project.

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

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

17 "(7) A shareholder, partner, member, owner, or
18 beneficiary which is eligible to receive a credit under
19 subdivision (3), (4), or (6) of this subsection and which is
20 an Alabama S corporation, or which has income which is subject
21 to taxation under Section 40-18-24 or Section 40-18-25(d),
22 solely for purposes of the application of this subsection,
23 shall be treated as though the shareholder, partner, member,
24 owner, or beneficiary were also an investing company.

25 "(8)a. An investing company which is a financial
26 institution as defined in Section 40-16-1 shall receive a
27 credit against the financial institution excise tax levied by

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

19 "b. In making the report required by Section
20 40-16-6(d), a financial institution receiving the capital
21 credit authorized in paragraph (8)a. shall not take into
22 account the qualifying project.

23 "(9) The capital credit allowed under this
24 subsection for any tax year of an investing company shall not
25 exceed the aggregate amount which otherwise would be due from
26 the investing company, its shareholders, partners, members,
27 owners, or beneficiaries to the state in tax with respect to

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

21 "(10) a. Except as provided in paragraph b. below,
22 in no event may any amount described in this subsection be
23 carried forward or back by any investing company,
24 shareholders, partners, members, owners, or beneficiaries with
25 respect to a prior or subsequent year.

26 "b. If the qualifying project has capital costs of
27 at least ~~one hundred million dollars~~ fifty million dollars

1 ~~(\$50,000,000)~~ and provides not less than ~~one hundred~~ fifty
2 jobs for new employees, the capital credit may be carried
3 forward for a maximum of ~~four~~ five taxable years, ~~depending~~
4 ~~on the amount of capital costs. Amounts described in this~~
5 ~~paragraph may only be carried forward by any investing~~
6 ~~company, shareholders, partners, members, owners, or~~
7 ~~beneficiaries as follows:~~

8 "1. ~~If the capital costs are at least four hundred~~
9 ~~million dollars, the capital credit may be carried forward for~~
10 ~~a maximum of four taxable years.~~

11 "2. ~~If the capital costs are at least three hundred~~
12 ~~million dollars but less than four hundred million dollars,~~
13 ~~the capital credit may be carried forward for a maximum of~~
14 ~~three taxable years.~~

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

19 "4. ~~If the capital costs are at least one hundred~~
20 ~~million dollars but less than two hundred million dollars, the~~
21 ~~capital credit may be carried forward for a maximum of one~~
22 ~~taxable year.~~

23 "5. ~~If the capital costs are less than one hundred~~
24 ~~million dollars, the capital credit may not be carried~~
25 ~~forward.~~

26 "c. Any provisions of the law to the contrary
27 notwithstanding, any entity described in paragraph b. may

1 delay the initial utilization of the capital credit for up to
2 three years after the qualifying project is placed in service,
3 after which time the 20-year period for the credit shall
4 begin.

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

23 "(c) The amendments made to this section by Act
24 2008-275 shall be effective for tax years and periods
25 beginning after December 31, 2011."

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.