

1 HB416  
2 167046-1  
3 By Representative Pringle  
4 RFD: Ways and Means Education  
5 First Read: 02-APR-15

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SYNOPSIS:           The Alabama Renewal Act would enact a number of new programs for the growth of Alabama as a place to do business.

          The bill would create a tax credit for increased use of the state's port, as well as for investments in early-state companies.

          The bill would create the Growing Alabama Act tax credit to address economic development needs in Alabama that cannot be solved with traditional tax incentives.

          The bill would add provisions to the Alabama Jobs Act proposed by HB 58 of the 2015 Regular Session. For companies receiving the Jobs Act Incentives that employ veterans as at least 12 percent of their workforce, the companies would receive an additional jobs credit of 0.5 percent of wages paid to veterans.

A BILL  
TO BE ENTITLED

1 AN ACT

2  
3 To enact the Alabama Renewal Act; to enact a number  
4 of new programs for the growth of business and industry in  
5 Alabama; to create tax credits for increased use of the  
6 state's port and small business investments with the potential  
7 for job growth; to create the Growing Alabama Act tax credit  
8 to address economic development needs in Alabama that cannot  
9 be solved with traditional tax incentive; to cap the credits;  
10 to provide for the carryforward of certain earned but unused  
11 credits; to provide methods for claiming certain credits; to  
12 provide for proof that credits are due to be granted; to  
13 provide for the promulgation of forms; to create new Articles  
14 18 and 19 of Chapter 18 of Title 40; to add section  
15 40-18-376.1 to the Alabama Jobs Act proposed by HB 58 of the  
16 Regular Session of 2015 of the Alabama Legislature to provide  
17 an additional jobs credit of 0.5 percent of wages paid to  
18 veterans in certain cases; to provide for the promulgation of  
19 regulations; to provide for the severability of invalid  
20 provisions; to provide for the repeal of conflicting laws; to  
21 provide for effective dates.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act shall be known as the "Alabama  
24 Renewal Act".

25 Section 2. A new Article 18 of Chapter 18 of Title  
26 40, Code of Alabama 1975, is created to read as follows:

1 § 40-18-400. For the purpose of this article, the  
2 following words and phrases shall have the following meanings:

3 (a) BASE CARGO VOLUME. The average cargo volume of a  
4 port facility user in the five years prior to the year for  
5 which the commission has granted approval for the company to  
6 claim the port credit.

7 (b) CARGO VOLUME. The total amount of net tons of  
8 noncontainerized general cargo or containers, measured in  
9 TEUs, transported by way of a waterborne ship through a port  
10 facility; provided that such cargo shall be owned by the port  
11 facility user at the time the port facility is used.

12 (c) CODE. The Internal Revenue Code of 1986, as  
13 amended, including any regulations promulgated pursuant  
14 thereto.

15 (d) COMMISSION. The Renewal of Alabama Commission  
16 created by Section 40-18-402.

17 (e) COMPANY. Anyone or anything which has the powers  
18 to conduct the activities required to claim one or both of the  
19 Renewal Tax Credits.

20 (f) EARLY-STAGE COMPANY. A company that meets each  
21 of the following criteria:

22 (1) Is duly formed, or qualified to do business, in  
23 the state;

24 (2) Has its headquarters and principal place of  
25 business in the state;

26 (3) Has been in business less than three years;

1           (4) Is not predominantly engaged in the provision of  
2 professional services, financial services, real estate  
3 development or leasing, construction, farming, retail sales,  
4 the extraction of natural resources, or an activity described  
5 in 26 U.S.C. § 147(e); and

6           (5) As to the company and any company that is under  
7 common ownership, management or control with it:

8           a. Has, or is anticipated to have, at least 75  
9 percent of its property and payroll in Alabama, using the  
10 property and payroll factor calculations found in this Title  
11 40;

12           b. Employs no more than 20 employees;

13           c. Has gross annual revenues of less than \$500,000  
14 in the fiscal year immediately prior to the investment; and

15           d. Has not raised more than \$1 million in qualified  
16 venture investments.

17           Common ownership shall be present if the companies  
18 are described in Code Section 267(b).

19           (g) PORT FACILITY. Any publicly- or privately-owned  
20 facility located within this state through which cargo is  
21 transported by way of a waterborne ship to or from  
22 destinations outside this state and which handles cargo owned  
23 by third parties in addition to cargo owned by the port  
24 facility's owner.

25           (h) PORT FACILITY USER. A company engaged in  
26 manufacturing, warehousing, or distribution which uses a port  
27 facility.

1 (i) PORT CREDIT. The credit provided for in Section  
2 40-18-404.

3 (j) PRINCIPAL OWNER. A company which owns at least  
4 50 percent of a venture company, using the attribution rules  
5 in Code Section 267.

6 (k) PROPOSED VENTURE INVESTOR. A company desiring to  
7 make an investment in a venture company which, prior to the  
8 granting of a venture credit certificate by the commission,  
9 shall meet all of the following:

10 (1) The individual or company is not a principal  
11 owner of the venture company;

12 (2) The proposed investment would be at risk and not  
13 secured or guaranteed; and

14 (3) The funds proposed for investment would not be  
15 raised or obtained as a result of other Alabama tax incentive  
16 programs.

17 (1) QUALIFIED VENTURE INVESTMENT. Capital which is  
18 invested in common or preferred stock, indebtedness with  
19 equity conversion rights, royalty rights, limited partnership  
20 interests, limited liability company interests, and any other  
21 securities or rights that evidence ownership in a venture  
22 company, but not including indebtedness that is:

23 (1) Provided by a bank, credit union or insurance  
24 company; or

25 (2) Secured by a valid mortgage, security agreement  
26 or other agreement or document that establishes a collateral  
27 or security position for the creditor that is senior to all

1 collateral or security interests of other persons that provide  
2 capital to the venture company.

3 (m) QUALIFIED VENTURE INVESTOR. An individual or  
4 company which receives a venture credit certificate from the  
5 commission or purchases a venture credit certificate in a  
6 permitted transfer under this article.

7 (n) RENEWAL TAX CREDITS. The venture credit and the  
8 port credit.

9 (o) TAX-ENFORCEMENT DEPARTMENT. As to the taxes  
10 levied by Chapters 16 and 18, the Department of Revenue, and,  
11 as to the tax levied by Section 27-4A-3(a), the Department of  
12 Insurance.

13 (p) TEU. A "twenty-foot equivalent unit" volumetric  
14 measure based on the size of a container twenty feet long by  
15 eight feet wide by eight feet, six inches high.

16 (q) VENTURE COMPANY. An early-stage company that is  
17 approved by the commission, as provided in Section  
18 40-18-403(a) (3).

19 (r) VENTURE CREDIT. The credit provided for in  
20 Section 40-18-403.

21 (s) VENTURE CREDIT CERTIFICATE. The certification of  
22 qualified venture investment entitling a qualified venture  
23 investor to a venture credit.

24 § 40-18-401.

25 (a) The following Renewal Tax Credits are created by  
26 this article and are allowed upon strict compliance with the  
27 provisions herein:

1                   (1) The venture credit provided for in Section  
2 40-18-403; and

3                   (2) The port credit provided for in Section  
4 40-18-404.

5                   (b) Prior to the allowance of any Renewal Tax  
6 Credit, an application shall be filed with the commission, on  
7 a form promulgated by the commission.

8                   (1) For the venture credit, an initial application  
9 shall be filed by an early-stage company, and a subsequent  
10 application shall be filed by individuals or companies  
11 desiring to be approved as qualified venture investors. For  
12 the port credit, the application shall be filed by the port  
13 facility user desiring to claim the credit.

14                   (2) The commission shall establish deadlines for  
15 applications. Such applications shall solicit whatever  
16 information the commission deems important to its  
17 determination of whether granting a Renewal Tax Credit will  
18 create new, high-paying jobs in the state, bring substantial  
19 capital to the state, increase the usage of a port facility,  
20 promote the development of clusters of businesses in the  
21 state, or promote the economic development efforts of the  
22 state.

23                   (3) Upon review of such applications, the commission  
24 shall approve such applications as shall result in credits  
25 being awarded so as not to exceed the following amounts:

26                   a. For the venture credit, \$5 million; and

27                   b. For the port credit, \$8 million.



1           In addition, the commission may grant conditional  
2 approval to applications above the amounts provided herein.  
3 Thereafter, if applications which were initially approved do  
4 not result in a claim of Renewal Tax Credits, then  
5 conditionally approved applications may be granted approval.  
6 The calculations required to be made by the commission shall  
7 be based on the initial returns filed by companies which had  
8 Renewal Tax Credits approved. No company may amend a return to  
9 claim an approved tax credit which was not claimed on its  
10 initial filed return, unless such amendment is to claim a  
11 credit which was conditionally approved initially.

12           (4) The commission shall charge application fees to  
13 offset the costs of administration of this article.

14           (c) Prior to claiming a Renewal Tax Credit, the  
15 company shall submit to the Department of Commerce a  
16 certification containing information adequate to prove that  
17 the company is entitled to the Renewal Tax Credit. Following  
18 such examination as it deems necessary, the Department of  
19 Commerce may certify the information and deliver the same to  
20 the tax-enforcement department. Thereafter, the  
21 tax-enforcement department shall allow the tax credit.

22           (d) (1) To the extent a Renewal Tax Credit is used to  
23 offset a financial institution excise tax liability, the  
24 Department of Finance shall promulgate regulations to ensure  
25 that the credit in no case would reduce the distribution for  
26 municipalities and counties.

1                   (2) To the extent the venture credit is used to  
2                   offset the insurance premium tax, the Department of Finance  
3                   shall promulgate regulations to ensure that the credit would  
4                   reduce the distribution for the Education Trust Fund, but in  
5                   no case would the venture credit reduce the distributions for  
6                   the State General Fund or the Alabama Special Mental Health  
7                   Trust Fund.

8                   (3) Renewal Tax Credits shall not be considered  
9                   securities under Section 8-6-2(10).

10                  (4) Nothing in this article shall be construed to  
11                  constitute a guarantee or assumption by the state of any debt  
12                  of any company nor to authorize the credit of the state to be  
13                  given, pledged or loaned to any company.

14                  (5) Nothing in this article shall be construed to  
15                  make available to any company any right to the benefits  
16                  conferred by this article absent strict compliance with this  
17                  article.

18                  (6) All filings made by a private party with the  
19                  commission or any department of the state government shall be  
20                  made using forms promulgated by such commission or department.  
21                  Any such filing shall be treated as a tax return, subject to  
22                  penalties imposed by the Department of Revenue.

23                  (7) Nothing in this article shall be construed to  
24                  limit the powers otherwise existing for the tax-enforcement  
25                  department to audit and assess a venture company or any  
26                  company claiming a Renewal Tax Credit.

27                  § 40-18-402.

1 (a) There is hereby created the Renewal of Alabama  
2 Commission.

3 (b) The commission shall be comprised of all of the  
4 following persons:

5 (1) The Finance Director, or his or her designee;

6 (2) The Secretary of Commerce, or his or her  
7 designee;

8 (3) One person appointed by the Governor;

9 (4) One person appointed by the Speaker of the  
10 House; and

11 (5) One person appointed by the President Pro  
12 Tempore of the Senate.

13 (c) All persons appointed to the commission shall  
14 have one or more of the following qualifications:

15 (1) Members must be knowledgeable in the management  
16 of money and finance;

17 (2) Members must possess experience in the  
18 management of investments in early-stage companies;

19 (3) Members must have experience in innovative  
20 technologies or products;

21 (4) Members must have experience in international  
22 trade;

23 (5) Members must have experience as chief executive  
24 officers, chief financial officers, or other executive-level  
25 management roles in businesses in this state which employ  
26 Alabama residents; or

1           (6) Members must have experience mentoring or  
2     advising entrepreneurs.

3           (d) The Secretary of Commerce, or his or her  
4     designee, shall be the chairman of the commission and shall  
5     preside over all meetings of the commission. The commission  
6     may elect such other officers as it may find necessary or  
7     desirable; provided that the commission shall have a board  
8     secretary to keep minutes of its proceedings. No officer of  
9     the commission other than the chairman need be a member of the  
10    commission.

11          (e) No member of the commission shall vote or  
12    participate in any matter in which the member or a family  
13    member of the member has any financial gain or interest.

14          (f) Members of the commission shall serve without  
15    compensation.

16          (g) The commission shall meet at the call of the  
17    chair or any majority of members thereof; provided that the  
18    commission shall meet at least two times annually.

19          (h) The commission shall adopt its own rules of  
20    procedure for the transaction of its business, and a majority  
21    of the members present shall constitute a quorum for the  
22    purpose of transacting or performing authorized duties.  
23    Meetings of the commission are exempt from Chapter 25A of  
24    Title 36, provided that the minutes of each meeting shall be  
25    made available for public inspection. In order to balance the  
26    privacy needs of companies with openness to the public, the

1 commission may use code names in its deliberations about  
2 various applicants and in the minutes of its proceedings.

3 (i) The Department of Commerce shall provide  
4 administrative and staffing support for the commission. The  
5 tax-enforcement department shall disclose to the commission  
6 whatever information it may possess which would allow the  
7 commission to fulfill this article; provided, however, that  
8 such information shall only be disclosed and discussed in a  
9 closed session. The tax-enforcement department may require  
10 members of the commission to execute confidentiality  
11 agreements before the disclosure of information.

12 (j) The commission shall make an annual report of  
13 its findings and recommendations to the Legislature during  
14 each regular session, and in its discretion may submit  
15 additional reports from time to time.

16 § 40-18-403.

17 (a) (1) If approved by the commission, the venture  
18 credit is allowed to a qualified venture investor which makes  
19 a qualified venture investment in a venture company. The  
20 venture credit shall be in an annual amount of 6 percent each  
21 year for 5 years.

22 (2) The commission shall accept applications from  
23 early-stage companies desiring to be approved as venture  
24 companies. The procedures in Section 40-18-401(b) shall govern  
25 such applications.

26 (3) Upon the approval of an early-stage company as a  
27 venture company, the commission shall accept applications from

1 individuals or companies desiring to be approved as qualified  
2 venture investors. The procedures in Section 40-18-401(b)  
3 shall govern such applications. If the commission should  
4 approve an individual or company as a qualified venture  
5 investor, the Department shall issue venture credit  
6 certificates to allow the venture credit to be claimed in each  
7 year for 5 years.

8 (4) During the five years following the date on  
9 which the venture credit is awarded, the qualified venture  
10 investment may only be used by the venture company for capital  
11 expenditures, equipment, research and development, working  
12 capital for the business, or other uses as may be approved by  
13 the Department of Commerce. Unless approved by the Department  
14 of Commerce, in no event shall invested capital be used:

15 a. To pay dividends or make distributions of capital  
16 to owners of a venture company;

17 b. To redeem shares, membership interests,  
18 partnership interests, or other equity interests in a venture  
19 company; or

20 c. To repay indebtedness to any owner of a venture  
21 company.

22 (b) The following methods may be used to realize the  
23 venture credit embodied in the venture credit certificates:

24 (1) The venture credit may offset the taxes levied  
25 by Chapters 16 and 18 or by Section 27-4A-3(a), but not below  
26 zero. The venture credit may also offset the estimated  
27 payments of the tax levied by Chapter 18, but not below zero;

1 provided that, in no event shall the venture credits be  
2 allowed to reduce any estimated payment of the taxes levied by  
3 Chapter 18 before October 1, 2016. In any one year, if the  
4 venture credit exceeds the amount of tax liability, the  
5 company may carry forward the unused venture credit. No  
6 carryforward shall be allowed for more than five years. Rules  
7 similar to those used for Section 40-18-15.2 shall be applied.

8 (2) Venture credits earned by a flow-through entity  
9 may be allocated among some or all of the owners of such  
10 entity in any manner specified, regardless of whether the  
11 allocation follows rules similar to 26 U.S.C. § 704(b) and the  
12 regulations thereunder. The owners may then use their  
13 allocated share of the credits to offset any of the taxes  
14 levied by Chapters 16 and 18 or by Section 27-4A-3(a), using  
15 the methods otherwise provided in subsection (b).

16 (3) A company may assign and convey a venture credit  
17 to another company if substantially all of the assets of the  
18 company are assigned and conveyed in the same transaction.  
19 Proof of such transfer shall be submitted to the  
20 tax-enforcement department.

21 (c) To the extent that the venture credit is  
22 utilized by the company or by a transferee company, no  
23 deduction for the related expenses shall be allowed.

24 (d) In addition to the transfer rights provided by  
25 paragraph (b)(3), the venture credit certificates may be  
26 transferred to another company. In that event, the transferee  
27 company may apply the venture credit to offset the taxes

1 levied by Chapters 16 and 18 or by Section 27-4A-3(a), but not  
2 below zero. The following provisions shall apply:

3 (1) The realization methods in subsection (b) shall  
4 apply to the qualified venture investor.

5 (2) A transfer shall not be allowed unless the  
6 transferee company and the qualified venture investor are both  
7 subject to the tax levied by Chapter 16, are both subject to  
8 the tax levied by Chapter 18, or are both subject to the tax  
9 levied by Section 27-4A-3(a).

10 (3) A transfer of the venture credit shall be made  
11 by written, notarized contract.

12 (4) Upon review of the contract and submission of  
13 other information required by the Department of Commerce, the  
14 Secretary of Commerce may issue a certificate of  
15 transferability and deliver the same to the tax-enforcement  
16 department.

17 (5) At the conclusion of each year for which a  
18 venture credit is permitted to be transferred, the qualified  
19 venture investor shall certify to the tax-enforcement  
20 department the amount of venture credit to which it is  
21 entitled. If the qualified venture investor is found to have  
22 transferred more than that amount, the qualified venture  
23 investor shall be liable for the underpayment of tax  
24 attributable to the venture credit and for penalties and  
25 interest thereon. Unless the purchase of the venture credit is  
26 determined to have been made in a fraudulent manner, or is a  
27 transfer in anticipation of bankruptcy, insolvency or closure,



1 a transferee company shall not be liable for the unpaid tax  
2 attributable to the venture credit, or for penalties or  
3 interest thereon.

4 (6) A transferee company may not make a subsequent  
5 transfer of the credit.

6 § 40-18-404.

7 (a) If approved by the commission, a port credit is  
8 allowed, in an amount equal to \$50 per TEU or \$3.00 per net  
9 ton, multiplied by the following:

10 (1) The port user's cargo volume in the year for  
11 which the commission has granted approval for the port user to  
12 claim the port credit, minus

13 (2) The port user's base cargo volume.

14 (b) The commission may decrease the amount of the  
15 port credit to ensure that the anticipated revenues for the  
16 port facility and state will exceed the amount of the port  
17 credit sought. The port credit may be conditioned on whatever  
18 requirements the commission shall impose.

19 (c) The following methods may be used to realize the  
20 port credit:

21 (1) The port credit may offset the tax levied by  
22 Chapter 18, but not below zero. The port credit may also  
23 offset the estimated payments of the tax levied by Chapter 18,  
24 but not below zero; provided that, in no event shall the port  
25 credits be allowed to reduce any estimated payment of the  
26 taxes levied by Chapter 18 before October 1, 2016. In any one  
27 year, if the port credit exceeds the amount of tax liability,

1 the port user may carry forward the unused port credit. No  
2 carryforward shall be allowed for more than five years. Rules  
3 similar to those used for Section 40-18-15.2 shall be applied.

4 (2) Port credits earned by a flow-through entity may  
5 be allocated among some or all of the owners of such entity in  
6 any manner specified, regardless of whether the allocation  
7 follows rules similar to 26 U.S.C. § 704(b) and the  
8 regulations thereunder. The owners may then use their  
9 allocated share of the credits to offset the tax levied by  
10 Chapter 18, using the methods otherwise provided in subsection  
11 (b).

12 (3) A company may assign and convey a port credit to  
13 another company if substantially all of the assets of the  
14 company are assigned and conveyed in the same transaction.  
15 Proof of such transfer shall be submitted to the  
16 tax-enforcement department.

17 (d) To the extent that the port credit is utilized  
18 by the port user or by a transferee company, no deduction for  
19 the related expenses shall be allowed.

20 (e) For any company which enters into an economic  
21 development project agreement with the state, the project  
22 agreement may provide for an allocation to the company of any  
23 port credits which have not been allocated pursuant to this  
24 article. Allocations made pursuant to this subsection shall  
25 meet the following requirements:

26 (1) Allocations shall be made by the Governor and  
27 approved by the commission;

1                   (2) Allocations shall not in the aggregate exceed \$1  
2 million;

3                   (3) Allocations shall be granted only to a new  
4 warehouse or distribution facility which commits to investing  
5 at least \$20 million at a single site and to creating 75 jobs;

6                   (4) Port credits may not be used until the  
7 Department of Commerce has received satisfactory proof that  
8 the capital investment and job creation requirements have been  
9 satisfied; and

10                   (5) Any port credit granted by this procedure shall  
11 not be granted for more than a 3-year period.

12                   Section 3. A new Article 19 of Chapter 18 of Title  
13 40, Code of Alabama 1975, is created to read as follows:

14                   § 40-18-410. For the purpose of this article, the  
15 following words and phrases shall have the following meanings:

16                   (a) ADDITIONAL ALLOCATION AMOUNT. An amount for the  
17 current year which is determined after all amounts in  
18 paragraph (f)(2) are verified for the current year, equal to  
19 the excess of:

20                   (1) The cap amount, minus

21                   (2) The contribution amounts for all taxpayers for  
22 the current year.

23                   (b) ADDITIONAL ALLOCATION SHARE. All or part of the  
24 additional allocation amount allocated by the Department of  
25 Revenue to taxpayers with carryforward amounts existing after  
26 all amounts in paragraph (f)(2) are verified for the current  
27 year. The amount of the additional allocation share for any

1 taxpayer shall not exceed such taxpayers' carryforward amounts  
2 but may exceed one tenth of the cap amount per taxpayer.  
3 Allocations of the additional allocation amount shall be made  
4 to taxpayers starting with the earliest issuance times, until  
5 the total allocations of Growing Alabama Credits for the  
6 current year should equal the cap amount.

7 (c) APPROVED ACTIVITY. An activity predominantly  
8 constituting one or more of the following:

9 (1) Described by NAICS Code 1133, 115111, 2121,  
10 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482,  
11 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493,  
12 511, 5121 (other than 51213), 51221, 517, 518 (without regard  
13 to the premise that data processing and related services be  
14 performed in conjunction with a third party), 51913, 52232,  
15 54133 (if predominantly in furtherance of another activity  
16 described in this article), 54134 (if predominantly in  
17 furtherance of another activity described in this article),  
18 54138, 5415, 541614, 5417, 55 (if not for the production of  
19 electricity), 561422 (other than establishments that originate  
20 telephone calls), 562213, 56291, 56292, 611512, 927 or 92811.

21 (2) The production of biofuel as such term is  
22 defined in Section 2-2-90(c)(2).

23 (3) The conduct of original investigations  
24 undertaken on a systematic basis to gain new knowledge or the  
25 application of research findings or other scientific knowledge  
26 to create new or significantly improved products or processes.

1           (4) The national or regional headquarters for a  
2 company that conducts significant business operations outside  
3 the state and that will serve as the principal office of the  
4 company's principal operating officer with chief  
5 responsibility for the daily business operations of the  
6 company.

7           (5) A target of the state's economic development  
8 efforts pursuant to the Accelerate Alabama Strategic Economic  
9 Development Plan adopted in January 2012 by the Alabama  
10 Economic Development Alliance, created by Executive Order  
11 Number 21 of the Governor on July 18, 2011, or any amended  
12 version or successor document thereto.

13           (6) A type listed in a regulation adopted by the  
14 Department of Commerce, other than a regulation submitted as  
15 an emergency rule.

16           Notwithstanding the foregoing, an approved activity  
17 shall not predominantly include farming activities involving  
18 trees, animals or crops or the retail sale of tangible  
19 personal property or services. This provision shall not be  
20 deemed to exclude customer service centers, call centers or  
21 headquarters otherwise allowed as an approved activity.

22           (d) CAP AMOUNT. The amount of unallocated cap  
23 provided for in Section 6 of HB 58, as proposed in the 2015  
24 Legislative Regular Session. The cap amount shall be  
25 determined by the Department of Finance as of January 1 of the  
26 current year using project agreements executed by the

1 immediately preceding December 31, and such determination  
2 shall apply for the whole of the current year.

3 (e) CARRYFORWARD AMOUNT. As to a taxpayer for any  
4 given year, the excess of:

5 (1) All amounts contributed under paragraph (f) (2)  
6 during the 10 years preceding the given year; minus

7 (2) The credit amounts allowed during the 10 years  
8 preceding the given year.

9 (f) CONTRIBUTION AMOUNT. As to a taxpayer, the sum  
10 of:

11 (1) The first-day allocation for the current year;  
12 plus

13 (2) Contributions made during the current year which  
14 are shown in online filings with the Department of Revenue,  
15 but not including any amount which is not received by an  
16 economic development organization within 15 days of the  
17 issuance time, as verified to the Department by the economic  
18 development organization within 20 days of the issuance time.

19 Although a taxpayer may, in paragraph (2),  
20 contribute to a statewide organization any amount of cash or  
21 property, in no event shall the contribution amount for the  
22 taxpayer exceed one tenth of the cap amount for the current  
23 year, and the taxpayer's contribution amount shall not cause  
24 the contribution amounts for all taxpayers to exceed the cap  
25 amount for the current year. In paragraph (2), the Department  
26 of Revenue shall not allow contributions under this article to

1 a regional or local organization in excess of \$1 million per  
2 year.

3 (g) CREDIT AMOUNT. As to a taxpayer, the lesser of:

4 (1) 50% of the taxpayer's tax liability for the  
5 current year; or

6 (2) The contribution amount for the current year  
7 plus the additional allocation share for the current year.

8 Contributions will be deemed to be part of the  
9 credit amount on a first in, first out basis, except that  
10 contributions to a regional or local organization shall be  
11 deemed to be made in the year of the issuance time.

12 (h) ECONOMIC DEVELOPMENT ORGANIZATIONS. Statewide  
13 organizations, as well as regional or local organizations.

14 (i) FIRST-DAY ALLOCATION. For a taxpayer, the  
15 carryforward amount existing at the end of the prior year, as  
16 calculated after any additional allocation shares for the  
17 prior year are allocated by the Department of Revenue. In no  
18 event shall the first-day allocation for a taxpayer exceed one  
19 tenth of the cap amount for the current year. The taxpayer's  
20 first-day allocation shall not cause the first-day allocations  
21 for all taxpayers with an earlier issuance time to exceed the  
22 cap amount for the current year.

23 (j) GROWING ALABAMA CREDIT. The credit provided for  
24 in Section 40-18-411(a).

25 (k) ISSUANCE TIME. As to a taxpayer, the moment in  
26 time at which the taxpayer files with the Department of  
27 Revenue a request for Growing Alabama Credits.

1 (1) PRIVATE LANDOWNER. An individual or entity  
2 receiving a benefit from an economic development organization,  
3 which benefit does not relate to an approved activity. The  
4 term shall not include entities listed in Section  
5 40-18-414(a)(2).

6 (m) QUALIFYING PURPOSE. Any activity for the benefit  
7 of Alabama or any community therein which constitutes any of  
8 the following:

9 (1) Promoting the state as a place for the location  
10 or expansion of industries or businesses conducting approved  
11 activities;

12 (2) The identification, acquisition, preparation,  
13 and rehabilitation of sites and the construction or  
14 rehabilitation of vacant buildings, which sites and buildings  
15 could reasonably be anticipated to be used by any type of  
16 industry or business which conducts an approved activity;

17 (3) The creation of public infrastructure in Alabama  
18 which could reasonably be anticipated to be in support of any  
19 type of industry or business which conducts an approved  
20 activity;

21 (4) The revitalization of downtown areas, including  
22 the renovation and preservation of buildings in downtown  
23 areas;

24 (5) Preserving and expanding the missions and  
25 activities conducted at military bases and installations in  
26 Alabama;



1           (6) Creating and promoting mechanisms to match  
2 workforce needs with the state's education system;

3           (7) The placement of high-technology devices in  
4 Alabama classrooms; and

5           (8) An activity described in a regulation issued by  
6 the Department of Commerce, other than a regulation submitted  
7 as an emergency rule.

8           (n) REGIONAL OR LOCAL ORGANIZATION. No more than 5  
9 organizations chosen for a 1-year period upon annual  
10 applications to the Department of Commerce, each of which is  
11 determined by the Department of Commerce to meet the following  
12 criteria:

13           (1) The organization is exempt from federal income  
14 tax under section 501(c)(3), (4), or (6) of the Internal  
15 Revenue Code of 1986, as amended, or is an entity organized by  
16 two or more Alabama municipalities, two or more Alabama  
17 counties, or at least one Alabama municipality and at least  
18 one Alabama county;

19           (2) The organization supports economic development  
20 initiatives on a regional or local level; and

21           (3) The organization has a defined strategy to  
22 achieve a qualifying purpose with the cooperation of two or  
23 more local or regional governments.

24           (o) STATEWIDE ORGANIZATIONS. One or more  
25 organizations, each of which is determined by the Department  
26 of Commerce to meet the following criteria:

1           (1) The organization is exempt from federal income  
2 tax under section 501(c) (6) of the Internal Revenue Code of  
3 1986, as amended;

4           (2) The organization was organized at least 20 years  
5 prior to the effective date of this article to lend support to  
6 economic development initiatives in the state;

7           (3) The organization has a record of supporting  
8 recruitment, retention, and innovation activities in Alabama;

9           (4) The organization provides the means by which the  
10 private sector collectively participates in economic  
11 development initiatives throughout the state; and

12           (5) The organization will not employ or retain  
13 registered lobbyists during the time that it is designated as  
14 a statewide organization.

15           § 40-18-411.

16           (a) A taxpayer is allowed a Growing Alabama Credit  
17 in an amount equal to the credit amount. The Growing Alabama  
18 Credit shall be applied against the tax levied by Chapter 18,  
19 or used as an estimated payment of the tax levied by Chapter  
20 18, but not below zero. In no event shall Growing Alabama  
21 Credits be allowed to reduce any estimated payment of the tax  
22 levied by Chapter 18 before October 1, 2016.

23           (b) (1) Donated property shall be valued at its fair  
24 market value using the "qualified appraisal" standards set  
25 forth by the IRS.

26           (2) In calculating any of the amounts in Section  
27 40-18-410, the amounts may not be less than zero, and they

1 shall not be calculated to cause a violation of the caps in  
2 subsection (c).

3 (3) In the event that the limitation in Section  
4 40-18-410(g)(1) should apply to a taxpayer, the Department of  
5 Revenue shall make any resulting computational changes that  
6 impact the taxpayer, but no other taxpayer shall be  
7 disadvantaged thereby.

8 (c) Each regional or local organization shall  
9 receive no more than \$1 million per year.

10 (d) The Department of Commerce shall name at least  
11 one statewide organization within 30 days of the effective  
12 date of this article and will annually select the regional or  
13 local organizations for a year at any time, but at least  
14 before the close of January of that year. The Department of  
15 Commerce may require the submission of applications.

16 § 40-18-412.

17 (a) The Growing Alabama Credits shall be granted to  
18 taxpayers using an online system administered by the  
19 Department of Revenue. The online system shall allow taxpayers  
20 to file applications showing the amount of the total  
21 contributions of cash and property which the taxpayer expects  
22 in good faith to contribute to one or more economic  
23 development organizations, and contributions to statewide  
24 organizations shall be permitted even if in excess of the  
25 various limitations in this article.

1 (b) The online filing system shall first be  
2 available in January 2016, but shall not be available during  
3 January of any other year.

4 § 40-18-413.

5 (a) A taxpayer may not restrict a contribution to  
6 any specific purpose.

7 (b) An economic development organization may refuse  
8 to accept any contributions it wishes to refuse.

9 (c) Individual donors shall not be dependents of  
10 other taxpayers.

11 (d) A taxpayer, including a corporate taxpayer, an  
12 individual, or a married couple filing jointly, may claim an  
13 allowable credit only once. To the extent that a Growing  
14 Alabama Credit is claimed by a taxpayer, the taxpayer shall  
15 not be allowed any deduction which would have otherwise been  
16 allowed for the taxpayer's contribution.

17 (e) Credits may only be claimed by the donating  
18 individual or corporate entity and may not be assigned or  
19 transferred to any other taxpayer except as a part of a sale  
20 of substantially all of the assets of the taxpayer. A taxpayer  
21 may not claim a credit for a donation made by any other  
22 entity, including an entity taxed under subchapter S or  
23 subchapter K of which the taxpayer is an owner, shareholder,  
24 partner or member.

25 § 40-18-414.

26 (a) (1) For any contribution of property or cash for  
27 which a Growing Alabama Credit has been granted, an economic

1 development organization shall use such contributions solely  
2 for one or more qualifying expenditures.

3 (2) In furtherance of paragraph (1), an economic  
4 development organization may use subsidiaries, partnerships,  
5 and disregarded entities and may act in conjunction with other  
6 organizations exempt from federal income tax under section  
7 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue  
8 Code of 1986, as amended, with an Alabama municipality or  
9 county, or with an entity organized by one or more of them.

10 (b) In conducting the activities specified in  
11 Section 40-18-410(m)(2), (3), or (4), an economic development  
12 organization shall not use any contribution of property or  
13 cash for which a Growing Alabama Credit has been granted in  
14 any manner that primarily benefits a private landowner, other  
15 than the acquisition of property owned by a private landowner  
16 at or below an appraised fair market value, or the sale or  
17 lease of property to a private landowner at or above an  
18 appraised fair market value. The Department of Commerce may  
19 issue written advice on whether a proposed use of property or  
20 cash would violate this subsection, and an economic  
21 development organization may rely on that advice.

22 (c)(1) For any contribution of property or cash for  
23 which a Growing Alabama Credit has been granted, an economic  
24 development organization shall segregate and separately  
25 account for such contribution from all other assets of the  
26 organization. Excess funds that are not expended during any  
27 taxable year may be invested in stocks, bonds, loans, or real

1 estate, so long as the funds are separately accounted for. As  
2 any investment income shall be reinvested or used for a  
3 qualifying expenditure.

4 (2) An economic development organization shall not  
5 invest any contribution for which a Growing Alabama Credit has  
6 been granted directly or indirectly in the contributing  
7 taxpayer's stocks or bonds, except through a mutual fund. If  
8 an economic development organization receives as a  
9 contribution any stocks or bonds of the contributing taxpayer  
10 or its affiliate, the organization shall, within a reasonable  
11 and commercially feasible time, sell such stocks or bonds and  
12 either reinvest in other stocks, bonds or real estate or use  
13 the funds for a qualifying expenditure. The Department of  
14 Commerce may issue written advice on whether a proposed  
15 divestment would be made in a reasonable and commercially  
16 feasible time.

17 (3) An economic development organization may use  
18 contributed property or cash for the payment of administrative  
19 expenses, but only to the extent such expenses are incurred  
20 because of the organization's status as an economic  
21 development organization. Such expenses may be approved in a  
22 writing by the Department of Commerce, or may be provided for  
23 in regulations promulgated by the Department of Commerce.

24 (d) Each economic development organization shall  
25 annually submit a report to the Department of Commerce  
26 detailing its annual qualifying expenditures. The organization

1 shall make such other reports as may be required by the  
2 Department.

3 (e) The status of an organization as an economic  
4 development organization shall be terminated upon any of the  
5 following:

6 (1) A determination by the Department of Revenue  
7 that the organization has lost its tax-exempt status;

8 (2) A determination by the Department of Commerce  
9 that the organization has used funds for a non-qualifying  
10 expenditure; or

11 (3) A determination by the Department of Commerce  
12 that the organization has demonstrated a lack of institutional  
13 control by failing timely to make reports required by this  
14 section.

15 The termination of the status of any approved  
16 economic development corporation shall not cause any taxpayer  
17 to lose any credits previously granted to the taxpayer.

18 (f) If an economic development organization should  
19 have received cash and property which has not become part of a  
20 taxpayer's creditable amount at the time of the organization's  
21 termination of its status as an economic development  
22 organization, the economic development organization shall  
23 consult with the taxpayer who made the contribution and  
24 transfer such funds to a statewide organization.

25 (g) An economic development organization shall be  
26 subject to the limitations in this article as to cash and  
27 property for which a Growing Alabama Credit is issued, even

1 after the organization's status as an economic development  
2 organization should expire or be otherwise terminated.

3 § 40-18-415.

4 (a) All filings made by a private party with any  
5 department of the state government shall be made using forms  
6 promulgated by such department. Any such filing shall be  
7 treated as a tax return, subject to penalties imposed by the  
8 Department of Revenue.

9 (b) Nothing in this article shall be construed to  
10 constitute a guarantee or assumption by the state of any debt  
11 of any company nor to authorize the credit of the state to be  
12 given, pledged or loaned to any company.

13 (c) Nothing in this article shall be construed to  
14 make available to any taxpayer any right to the benefits  
15 conferred by this article absent strict compliance with this  
16 article.

17 (d) Nothing in this article shall be construed to  
18 limit the powers otherwise existing for the Department of  
19 Revenue to audit and assess a taxpayer claiming the Growing  
20 Alabama Credit.

21 (e) The Departments of Commerce and Revenue are  
22 authorized to promulgate regulations as necessary to implement  
23 and administer the provisions of this article.

24 Section 4. New Section 40-18-402.1 is added to  
25 Article 18 of Chapter 18 of Title 40, Code of Alabama 1975,  
26 and new Section 40-18-414.1 is added to Article 19 of Chapter  
27 18 of Title 40, Code of Alabama 1975, both to read as follows:



1           § 40-18-402.1. The commission shall make an annual  
2 report on the use of funds pursuant to this article. Such  
3 report shall be made to the Joint Legislative Advisory  
4 Committee on Economic Incentives established by Section  
5 40-18-379, at the times and in the manner requested by the  
6 Committee. Any publicly-available version of the report may  
7 redact information which the Department of Commerce believes  
8 would place the state at a competitive disadvantage.

9           § 40-18-414.1. The Department of Commerce shall make  
10 an annual report on the use of funds pursuant to this article  
11 to the Joint Legislative Advisory Committee on Economic  
12 Incentives established by Section 40-18-379, at the times, and  
13 in the manner, requested by the Committee. Any  
14 publicly-available version of the report may redact  
15 information which the Department of Commerce believes would  
16 place the state or a community therein at a competitive  
17 disadvantage.

18           Section 5. New Section 40-18-376.1 is added to  
19 Article 16 of Chapter 18 of Title 40, Code of Alabama 1975,  
20 which article is proposed by HB 58 of the Regular Session of  
21 2015 of the Alabama Legislature. Said Section 40-18-376.1  
22 shall read as follows:

23           § 40-18-376.1.

24           (a) The provisions in this section shall apply to  
25 any incentivized company that employed, in the prior year, at  
26 least 12 percent of its eligible employees as veterans who  
27 received an honorable or general discharge. The calculation of

1 the percentage of eligible employees who are veterans shall be  
2 made using the method provided in a project agreement.

3 (b) Any incentivized company described by subsection  
4 (a) shall receive an additional 0.5 percent jobs credit  
5 provided in Section 40-18-375(a) on the wages paid during the  
6 prior year to eligible employees who are veterans.

7 (c) No incentivized company claiming the credit  
8 provided by subsection (b) shall also claim the credit  
9 provided by Article 13 of this Chapter 18 for any portion of  
10 the project.

11 (d) The Department of Labor shall periodically  
12 verify the actual number of veterans employed by the  
13 incentivized company and the wages of the veterans during the  
14 relevant year. If the Department of Labor is not able to  
15 provide the verification utilizing all available resources, it  
16 may request any additional information from the incentivized  
17 company as may be necessary.

18 Section 6. If a court of competent jurisdiction  
19 adjudges invalid or unconstitutional any clause, sentence,  
20 paragraph, section, or part of this act, such judgment or  
21 decree shall not affect, impair, invalidate, or nullify the  
22 remainder of this act, but the effect of the decision shall be  
23 confined to the clause, sentence, paragraph, section, or part  
24 of this act adjudged to be invalid or unconstitutional.

25 Section 7. All laws or parts of laws which conflict  
26 with this act are repealed.

1           Section 8. Sections 1, 2, 3, 5, 6, 7, and 8 of this  
2 act shall become effective on January 1, 2016, following its  
3 passage and approval by the Governor, or its otherwise  
4 becoming law. Section 4 of this act shall become effective on  
5 January 1, 2016 following its passage and approval by the  
6 Governor, or its otherwise becoming law, but only if HB 58 of  
7 the Regular Session of 2015 of the Alabama Legislature should  
8 be enacted. In the event that HB 58 of the Regular Session of  
9 2015 of the Alabama Legislature is not enacted, then Section 4  
10 of this act shall become null and void, but all other sections  
11 of this act shall become effective as otherwise provided  
12 herein.