

1 HB59
2 164956-1
3 By Representative Lee
4 RFD: Economic Development and Tourism
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8 SYNOPSIS: The Alabama Reinvestment and Abatements Act
9 would create incentives to encourage capital
10 reinvestment by businesses in Alabama into their
11 current operations, and would grant additional
12 authority to abate noneducational ad valorem taxes.

13 The bill would create reinvestment
14 incentives to help ensure that companies currently
15 operating in Alabama would not close or move. For
16 certain properties that are refurbished, upgraded,
17 or placed back in service, abatements of certain
18 construction related transaction taxes and certain
19 noneducational ad valorem taxes would be available,
20 companies could receive a rebate of incremental
21 increases in utility taxes, and AIDT worker
22 training would be available.

23 The bill would also allow for abatements of
24 state ad valorem taxes and local noneducational
25 property taxes to be granted for up to 20 years, an
26 additional 10 years over current state law.
27 Businesses or business activities eligible to

1 receive abatements would also be amended to reflect
2 consistency with other incentive programs
3 authorized by state law.
4

5 A BILL
6 TO BE ENTITLED
7 AN ACT
8

9 To enact the Alabama Reinvestment and Abatements
10 Act; to provide certain incentives to promote capital
11 reinvestment by existing industry in Alabama; to authorize
12 abatements of construction related transaction taxes, state ad
13 valorem taxes, and municipal and county noneducational ad
14 valorem taxes in certain instances; to provide that municipal
15 taxes could be abated only by the municipality, county taxes
16 only by the county, and state taxes only by the Governor; to
17 authorize a refund of new, incremental taxes levied by
18 Sections 40-21-82(a) and 40-21-102(a), Code of Alabama 1975,
19 for a qualifying project; to provide for proof that such
20 incentive is due to be granted; to provide for the
21 distribution of utility taxes when a company claims such
22 incentive; to authorize AIDT to perform employee training for
23 the operation of any equipment for qualifying projects; to
24 provide procedures for the granting of abatements; to provide
25 for the promulgation of forms for information to be submitted
26 to a department of state government, and that such submissions
27 shall be treated as tax returns; to provide for audits of

1 companies claiming the incentives; to provide for the
2 continued applicability of Chapter 9B of Title 40, Code of
3 Alabama 1975, to private users; to provide that no company
4 shall have any right to incentives that are granted absent
5 strict compliance with this act; to provide that no cause of
6 action shall exist for the denial of any benefit under this
7 act; to authorize abatements of state ad valorem taxes and
8 local noneducational ad valorem taxes for a period of up to 20
9 years; to provide that neither an inducement nor a request for
10 inducement is required to apply for, grant, or receive any
11 abatement of taxes allowed to be abated; to update the NAICS
12 codes and include other activities; to provide that abatements
13 would end if the property has ceased to be used for its
14 intended purpose for at least 6 months; for ad valorem tax
15 abatements longer than 10 years, to provide that municipal
16 taxes could be abated only by the municipality, county taxes
17 only by the county, and state taxes only by the Governor; to
18 provide for the disposition of financial remuneration paid by
19 private users after an abatement, based on the tax proceeds
20 which would have been paid; to create a new Chapter 9G of
21 Title 40, Code of Alabama 1975; to amend Sections 40-9B-3 and
22 40-9B-5, Code of Alabama 1975; to provide for the promulgation
23 of regulations; to provide for the severability of invalid
24 provisions; to provide for the repeal of conflicting laws; to
25 provide for an effective date.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known as the "Alabama
2 Reinvestment and Abatements Act".

3 Section 2. A new Chapter 9G of Title 40, Code of
4 Alabama 1975, is created to read as follows:

5 § 40-9G-1. For purposes of the chapter, the
6 following words and phrases shall have the following meaning:

7 (1) APPROVED ACTIVITY. The conduct of an activity
8 that is predominantly any one or more of the following:

9 a. 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, 927 or 92811.

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

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

1 d. 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 e. A target of the state's economic development
8 efforts pursuant to either of the following:

9 (i) The Accelerate Alabama Strategic Economic
10 Development Plan adopted in January 2012 by the Alabama
11 Economic Development Alliance, created by Executive Order
12 Number 21 of the Governor on July 18, 2011, or any amended
13 version or successor document thereto; or

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

17 Notwithstanding the foregoing, an approved activity
18 shall not predominantly concern farming activities involving
19 trees, animals or crops, nor the retail sale of tangible
20 personal property or services. This provision shall not be
21 deemed to exclude customer service centers, call centers or
22 headquarters otherwise allowed by this subsection (1).

23 (2) COMPANY. Anyone or anything which has the powers
24 to own a project and have employees.

25 (3) NAICS CODE. Any sector, subsector, industry
26 group, industry or national industry of the 2012 North
27 American Industry Classification System, or any similar

1 classification system developed in conjunction with the United
2 States Department of Commerce or Office of Management and
3 Budget.

4 (4) QUALIFYING PROJECT. Any project a. that proposes
5 to invest in capital expenditures that equal or exceed
6 \$2,000,000 as part of any addition, expansion, improvement,
7 renovation, re-opening, or rehabilitation of a facility, or
8 replacement of any existing equipment or tangible personal
9 property; b. that predominantly involves an approved activity;
10 and c. for which no project agreement has been entered into
11 with the Governor for the provision of other incentives.

12 (5) UTILITY TAXES. The taxes imposed by Sections
13 40-21-82 and 40-21-102.

14 § 40-9G-2.

15 (a) For any qualifying project, an abatement may be
16 allowed for ad valorem taxes and construction related
17 transaction taxes.

18 (1) The abatement of construction related
19 transaction taxes shall be subject to and shall follow the
20 procedures, provisions, limitations, and definitions of
21 Chapter 9B, except that capitalized repairs, rebuilds,
22 maintenance and replacement equipment shall qualify for
23 abatements.

24 (2) The abatement of ad valorem taxes shall be
25 subject to and shall follow the procedures, provisions,
26 limitations, and definitions of Chapter 9B, except as follows:

1 a. The amount of the ad valorem tax abatement shall
2 be equal to the ad valorem taxes owed, minus the ad valorem
3 taxes owed from the tax year immediately before the qualifying
4 project was placed in service;

5 b. As to any ad valorem tax abatement, capitalized
6 repairs, rebuilds, maintenance and replacement equipment shall
7 qualify for abatements; and

8 c. Regardless of the length of the abatement, county
9 noneducational taxes may be abated only with the consent by
10 resolution of the governing body of the county, municipal
11 noneducational taxes may be abated only with the consent by
12 resolution of the governing body of the municipality, and
13 state ad valorem taxes may be abated only with the consent of
14 the Governor. The governing body of a county and a
15 municipality may separately authorize one or more public
16 industrial authorities to provide by resolution for such
17 consent on its behalf.

18 (b) For any qualifying project, a refund of utility
19 taxes may be allowed for up to a ten-year period. The refund
20 shall be calculated and paid annually, as follows:

21 (1) The amount of the refund shall be equal to the
22 utility taxes paid, minus the utility taxes paid on average
23 during the three tax years immediately before the qualifying
24 project was placed in service.

25 (2) For each year of the incentive period for the
26 utility tax refund, the incentivized company shall submit to
27 the Department of Commerce a certification as to the utility

1 taxes paid during the prior year. Following such examination
2 as it deems necessary, the Department of Commerce may certify
3 the information and deliver same to the Department of Revenue.
4 Thereafter, the Department of Revenue shall calculate the
5 correct refund and issue it directly to the company.

6 The Department of Finance shall promulgate
7 regulations to ensure that the refund in no case would reduce
8 the distribution for the Alabama Special Mental Health Trust
9 Fund.

10 An incentivized company may assign and convey a
11 utility tax refund to another entity if substantially all of
12 the assets of the incentivized company are assigned and
13 conveyed in the same transaction. Proof of such transfer shall
14 be submitted to the Departments of Commerce and Revenue.

15 (c) For any qualifying project, AIDT training for
16 new or current employees to operate new and replacement
17 equipment may be provided.

18 (d) In order to receive the incentives described in
19 subsections (b) or (c), the following shall occur:

20 (1) For any company that proposes a qualifying
21 project, the Secretary of Commerce shall make the following
22 findings:

23 a. That the project is in fact a qualifying project;

24 b. That the company or any related company has not
25 defaulted on a project agreement or similar agreement, or any
26 economic incentive agreement at any time during the last 10
27 years; and

1 c. That the qualifying project will promote the
2 continued and sustained operation of the company's business
3 operations in Alabama.

4 (2) Upon making affirmative findings on the criteria
5 set forth in paragraph (1), the Secretary of Commerce shall
6 recommend to the Governor that the company and qualifying
7 project be approved for one or more of the incentives
8 described in subsections (b) and (c). The name of the company
9 and information collected about it and the qualifying project
10 by the Secretary shall be forwarded to the Governor.

11 (3) After reviewing the information provided by the
12 Secretary of Commerce, the Governor shall also determine
13 whether the company and the qualifying project meet the
14 criteria set forth in paragraph (1). If the Governor makes
15 such a finding, the company and qualifying project may claim
16 the incentives provided in subsections (b) and (c).

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

22 (f) Nothing in this chapter shall be construed to
23 limit the powers otherwise existing for the Department of
24 Revenue to audit and assess a company. Nothing in this chapter
25 shall be construed to limit the applicability of Chapter 9B to
26 a private user, as such term is used in Chapter 9B.

1 (g) Nothing in this chapter shall be construed to
2 make available to any company any right to the benefits
3 conferred by this chapter absent strict compliance with this
4 chapter. No cause of action shall exist for the denial of any
5 benefit under this article.

6 (h) The Departments of Commerce and Revenue shall
7 promulgate regulations to implement and administer the
8 provisions of this act.

9 Section 3. Sections 40-9B-3 and 40-9B-5, Code of
10 Alabama 1975, are amended to read as 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
27 personal property and taxable services incorporated into an

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

6 (4) DATA PROCESSING CENTER. An establishment at
7 which not less than 20 new jobs are located, the average
8 annual total compensation, including benefits, of such new
9 jobs to be not less than forty thousand dollars (\$40,000) and
10 such establishment is engaged in the provision of complete
11 processing and specialized reports from data, the provision of
12 automated data processing and data entry services, the
13 provision of an infrastructure for hosting or data processing
14 services, the provision of specialized hosting activities, the
15 provision of application service provisioning, the provision
16 of general time-share mainframe facilities, the provision or
17 operation of computer equipment or enabling software for the
18 processing, storage, backup, retrieval, communication or
19 distribution of data, or some combination of the foregoing,
20 without regard to whether any other activities are conducted
21 at the establishment.

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

1 related transaction taxes levied for educational purposes or
2 for capital improvements for education.

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

9 (7) HYDROPOWER PRODUCTION. The definition given in
10 Section 40-18-1.

11 (8) INDUCEMENT. Refers to an agreement, or an
12 "inducement agreement," entered into between a private user
13 and a public authority or county or municipal government
14 and/or a resolution or other official action, an "inducement
15 resolution," "inducement letter," or "official action" adopted
16 by a public authority or county or municipal government, in
17 each case expressing, among other things, the present intent
18 of such public authority or county or municipal government to
19 issue bonds in connection with the private use property
20 therein described. Notwithstanding any provision in this
21 chapter to the contrary, neither an inducement nor a request
22 for inducement shall be required to apply for, grant, or
23 receive any abatement of taxes allowed to be abated under this
24 chapter.

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

1 (10) INDUSTRIAL OR RESEARCH ENTERPRISE.

2 a. Any trade or business ~~described in the 2007 North~~
3 ~~American Industry Classification System, promulgated by the~~
4 ~~Executive Office of the President of the United States, Office~~
5 ~~of Management and Budget, Sectors 31 (other than National~~
6 ~~Industry predominately consisting of any one or more of the~~
7 following:

8 1. Described by NAICS Code 1133, 115111, 2121,
9 22111, 221330, 31 (other than 311811), 32, and 33; Subsectors
10 423, 424, 493 where the trade or business will (i) provide
11 logistics services related to the distribution of goods, (ii)
12 employ 50 or more persons within the first two years after
13 being placed in service, and (iii) involve a capital
14 investment of at least five million dollars (\$5,000,000),
15 except that the investment in a trade or business located in a
16 favored geographic area, as that term is defined in Section
17 40-18-190(a)(6), must exceed one million dollars (\$1,000,000),
18 511, and 927; Industry Groups 2121, 5417, 5415, and 5182 33,
19 423, 424, 482, 4862, 48691, 48699, 48819, 4882, 4883 (other
20 than 48833), 493, 511, 5121 (other than 51213), 51221, 517,
21 518 (without regard to the premise that data processing and
22 related services be performed in conjunction with a
23 third-party); Industries 11331 and 48691; and National
24 Industries 115111, 517110, 541380, and party), 51913, 52232,
25 54133 (if predominantly in furtherance of another activity
26 described in this article), 54134 (if predominantly in
27 furtherance of another activity described in this article),

1 54138, 5415, 541614, 5417, 55 (if not for the production of
2 electricity), 561422 (other than establishments that originate
3 telephone calls), ~~and includes such trades and businesses as~~
4 may be hereafter added by an act of the Legislature,
5 reclassified in any subsequent publication of the North
6 American Industry Classification System or other industry
7 classification system developed in conjunction with the United
8 States Department of Commerce, or any process or treatment
9 facility which recycles, reclaims, or converts any materials,
10 which include solids, liquids, or gases, to a reusable product
11 562213, 56291, 56292, 927 or 92811.

12 2. A target of the state's economic development
13 efforts pursuant to either of the following:

14 (i) The Accelerate Alabama Strategic Economic
15 Development Plan adopted in January 2012 by the Alabama
16 Economic Development Alliance, created by Executive Order
17 Number 21 of the Governor on July 18, 2011, or any amended
18 version or successor document thereto; or

19 (ii) A type listed in a regulation adopted by the
20 Department of Commerce, other than a regulation submitted as
21 an emergency rule.

22 Notwithstanding the foregoing, the activities
23 described in this definition shall not predominantly concern
24 farming activities involving trees, animals or crops, nor the
25 retail sale of tangible personal property or services. This
26 provision shall not be deemed to exclude customer service

1 centers or call centers otherwise allowed or provided for
2 herein.

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

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

21 d. "Industrial or research enterprise" also includes
22 any underground natural gas storage facility which is located
23 in the Gulf Opportunity Zone, as that phrase is defined in the
24 Gulf Opportunity Zone Act of 2005, developed from existing
25 geologic reservoirs, including, without limitation, salt
26 domes, and placed in service on or before December 31, 2013.

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

4 1. It produces electricity from:

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

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

10 2. All or a portion of the plant, property, or
11 facility is owned by one or more of the following:

12 (i) A utility described in Section 37-4-1(7)a., ~~an~~

13 (ii) An entity organized under the provisions of
14 Chapter 6 of Title 37, ~~or an~~

15 (iii) An authority both organized and existing
16 pursuant to the provisions of Chapter 50A of Title 11 and
17 subject to the payments required to be made in lieu of ad
18 valorem, sales, use, license, and severance taxes imposed by
19 Section 11-50A-7, ~~or an~~

20 (iv) An entity in which one or more of the foregoing
21 owns an interest.

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

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

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

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

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

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

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

25 a. ~~A period equal to the shorter of~~ Either of the
26 following:

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

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

13 ~~b~~2. Exclusively with respect to ~~a~~one or more private
14 users of a data processing center, the following:

15 (i) ~~a~~A period of 10 years from and after the date on
16 which private use property is or becomes owned, for federal
17 income tax purposes, by such private user or users (including
18 the lessor and any lessee with respect co-location centers),
19 if the aggregate capital investment in the data processing
20 center by ~~the~~ such private user or users does not exceed
21 \$200,000,000 within 10 years from the date on which ~~the~~a
22 private user commences the acquisition, construction, and
23 equipping of the data processing center,

24 (ii) ~~a~~A period of 20 years from and after the date
25 on which private use property is or becomes owned, for federal
26 income tax purposes, by such private user or users (including
27 the lessor and any lessee with respect to co-location

1 centers), if the aggregate capital investment in the data
2 processing center by ~~the~~such private user or users exceeds
3 \$200,000,000 but is not greater than \$400,000,000 within 10
4 years from the date on which ~~the~~a private user commences the
5 acquisition, construction, and equipping of the data
6 processing center, or

7 (iii) ~~a~~A period of 30 years from and after the date
8 on which private use property is or becomes owned, for federal
9 income tax purposes, by such private user or users (including
10 the lessor and any lessee with respect to co-location
11 centers), if the aggregate capital investment in the data
12 processing center by ~~the~~such private user or users exceeds
13 \$200,000,000 within 10 years from the date on which ~~the~~a
14 private user commences the physical work of constructing and
15 equipping the data processing center and exceeds \$400,000,000
16 within 20 years from the date on which ~~the~~a private user
17 commences the acquisition, construction, and equipping of the
18 data processing center.

19 For purposes of this subparagraph b2., a private
20 user's aggregate capital investment in a data processing
21 center shall include all real and personal property comprising
22 a data processing center, the costs of which may be
23 capitalized for federal income tax purposes. In no event shall
24 abatements of construction related transaction taxes or
25 noneducational ad valorem taxes granted for a data processing
26 center apply beyond the expiration of the applicable maximum
27 exemption period ~~;~~ or

1 b. The period ending on the date on which the
2 property has ceased, for 6 consecutive months, to be used in
3 the active conduct of an industrial or research enterprise.

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

6 (14) NAICS CODE. Any sector, subsector, industry
7 group, industry or national industry of the 2012 North
8 American Industry Classification System, or any similar
9 classification system developed in conjunction with the United
10 States Department of Commerce or Office of Management and
11 Budget.

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

18 (15~~6~~) PERSON. Includes any individual, partnership,
19 trust, estate, or corporation.

20 (16~~7~~) PRIVATE USER. Any individual, partnership, or
21 corporation organized for profit that is or will be treated as
22 the owner of private use property for federal income tax
23 purposes, any entity organized under Chapter 6 of Title 37,
24 and any authority both organized and existing pursuant to
25 Chapter 50A of Title 11 and subject to the payments required
26 to be made in lieu of ad valorem, sales, use, license, and
27 severance taxes imposed by Section 11-50A-7.

1 (178) PRIVATE USE INDUSTRIAL PROPERTY. Private use
2 property that also constitutes industrial development
3 property.

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

15 (1920) PUBLIC AUTHORITY. A corporation created for
16 public purposes pursuant to a provision of the Constitution of
17 Alabama of 1901, or a general or local law that authorized it
18 to issue bonds, the interest on which is exempt from the
19 Alabama income tax, as in effect on May 21, 1992.

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

23 (212) RENEWABLE ENERGY FACILITY. Any plant,
24 property, or facility that either:

25 a. Produces electricity or natural gas, in whole or
26 in part, from biofuels as such term is defined in Section
27 2-2-90(c) (2) or from renewable energy resources as such term

1 is defined in Section 40-18-1(30) with the exception that
2 hydropower production shall be excluded from such definition;
3 or

4 b. Produces biofuel as such term is defined in
5 Section 2-2-90(c)(2).

6 (~~22~~3) RESEARCH AND DEVELOPMENT FACILITY. An
7 establishment engaged in conducting original investigations
8 undertaken on a systematic basis to gain new knowledge or
9 applying research findings or other scientific knowledge to
10 create new or significantly improved products or processes, or
11 both.

12 (~~23~~4) STATEMENT OF INTENT. A written statement of
13 intent to claim an abatement provided in this chapter, or to
14 petition for local tax abatement, relating to an industrial or
15 research enterprise described in paragraph e. of subdivision
16 (10) of this subsection that is filed with the Department of
17 Revenue at any time prior to the date on which the industrial
18 or research enterprise described in paragraph e. of
19 subdivision (10) of this subsection is placed in service in
20 accordance with such procedures and on such form or forms as
21 may be prescribed by the Department of Revenue. Such statement
22 of intent shall contain a description of the industrial or
23 research enterprise described in paragraph e. of subdivision
24 (10) of this subsection; the date on which the acquisition,
25 construction, installation, or equipping of the industrial or
26 research enterprise described in paragraph e. of subdivision
27 (10) of this subsection was commenced or is expected to

1 commence; the actual or, if not known, the estimated capital
2 costs of the industrial or research enterprise described in
3 paragraph e. of subdivision (10) of this subsection; the
4 number of new employees to be employed at the industrial or
5 research enterprise described in paragraph e. of subdivision
6 (10) of this subsection; and any other information required by
7 the Department of Revenue.

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

20 A tourism destination attraction shall not include a
21 facility primarily devoted to the retail sale of goods; a
22 shopping center; a restaurant; a movie theater; a bowling
23 alley; a fitness center; a miniature golf course; or a
24 nightclub. Provided, however, that the capital costs of the
25 construction of a tourism destination attraction may include
26 the capital costs associated with the construction of any
27 retail establishment, restaurant or other portion of the

1 tourism destination attraction. The term also does not include
2 any gaming facility or establishment that the Secretary of the
3 Department of Commerce deems to be serving the local
4 community.

5 (b) The abatements of ad valorem taxes, and payments
6 in lieu thereof, allowed by amendments to this section by Act
7 2008-275 shall become effective for projects for which
8 statements of intent are filed after December 31, 2011. No ad
9 valorem taxes, or payments in lieu thereof, shall be abated
10 for periods prior to January 1, 2012. The other abatements
11 allowed by amendments made to this section by Act 2008-275
12 shall become effective after December 31, 2011.

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

21 "§40-9B-5.

22 "(a) Subject to the geographical or jurisdictional
23 or other limitations specified in subsections (b), (c), and
24 (d), the governing body of a municipality, a county, or a
25 public industrial authority may grant abatements of all of the
26 taxes allowed to be abated under Section 40-9B-4 with respect
27 to private use industrial property.

1 (b) (1) The abatements authorized to be granted
2 pursuant to subsection (a) for construction related
3 transaction taxes and for ad valorem taxes for a period not to
4 exceed 10 years may be granted:

5 ~~(1)~~a. By the governing body of a municipality, with
6 respect to private use industrial property located within the
7 limits of the municipality or within the police jurisdiction
8 of the municipality; provided, however, that the governing
9 body shall not grant an abatement of any county taxes unless
10 the body has also abated the corresponding municipal taxes.

11 ~~(2)~~b. By the governing body of a county, with
12 respect to private use industrial property located in the
13 county and not within a municipality or the police
14 jurisdiction of a municipality, unless consented to by
15 resolution of the governing body of the municipality.

16 ~~(3)~~c. By the governing body of a public industrial
17 authority, with respect to private use industrial property
18 located within the jurisdiction of the public industrial
19 authority; provided, however, that any municipal public
20 industrial authority shall not grant an abatement of any
21 county taxes unless the authority has also abated the
22 corresponding municipal taxes.

23 (2) The abatements authorized to be granted pursuant
24 to subsection (a) for ad valorem taxes for a period longer
25 than 10 years may be granted:

26 a. By the governing body of a municipality, with
27 respect to private use industrial property located within the

1 limits of the municipality or within the police jurisdiction
2 of the municipality, but only as to municipal noneducational
3 taxes.

4 b. By the governing body of a county, with respect
5 to private use industrial property located in the county, but
6 only as to county noneducational taxes.

7 c. By the Governor, with respect to private use
8 industrial property located in the state, but only as to state
9 taxes.

10 The governing body of a county and a municipality
11 may separately authorize one or more public industrial
12 authorities to provide by resolution for such consent on its
13 behalf.

14 (3) Notwithstanding the provisions of subsection (b)
15 of this section, abatements authorized to be granted pursuant
16 to subsection (a) for data processing centers may be granted
17 in accordance with subsection (b)(1) of this section without
18 regard to the time limitation stated in subsection (b)(1).

19 ~~(c) Should any municipality or municipal industrial~~
20 ~~authority abating a county tax receive payments,~~
21 ~~contributions, or other financial or in-kind awards from a~~
22 ~~corporation or other entity in exchange for such abatement,~~
23 ~~the payment, contribution, or other financial or in-kind~~
24 ~~contribution shall be divided between the municipality and~~
25 ~~county based upon the municipality's and county's portion of~~
26 ~~the tax proceeds which would have been paid if the tax were~~
27 ~~not abated by the authority. This subsection shall only apply~~

1 ~~to a municipal industrial authority which does not have a~~
2 ~~board member appointed by the affected county commission. If a~~
3 ~~tax is abated pursuant to this chapter, any payment,~~
4 ~~contribution, or other financial or in-kind award received~~
5 ~~from a private user or related party shall be divided between~~
6 ~~the parties whose taxes were abated based upon the tax~~
7 ~~proceeds which would have been paid if the taxes had not been~~
8 ~~abated, unless the party receiving such award can prove that~~
9 ~~the award was not related to the granting of any abatement.~~

10 (d) Any abatement of county taxes granted by a
11 municipality or municipal industrial authority shall not be
12 valid until the expiration of (1) 10 days following the date
13 of physical delivery to the county commission or (2) 13 days
14 following the date of mailing by certified mail to the county
15 commission of a copy of the resolution granting such
16 abatement. Proof of delivery by affidavit of service, in the
17 case of physical delivery, or by certified mail receipt, in
18 the case of mailing by certified mail, shall be furnished to
19 the Department of Revenue at the same time as the filing of
20 the abatement agreement under Section 40-9B-6. If the
21 procedures herein prescribed are followed, any such abatement
22 shall be effective as of the date granted."

23 Section 4. If a court of competent jurisdiction
24 adjudges invalid or unconstitutional any clause, sentence,
25 paragraph, section, or part of this act, such judgment or
26 decree shall not affect, impair, invalidate, or nullify the
27 remainder of this act, but the effect of the decision shall be

1 confined to the clause, sentence, paragraph, section, or part
2 of this act adjudged to be invalid or unconstitutional.

3 Section 5. All laws or parts of laws which conflict
4 with this act are repealed.

5 Section 6. This act shall become effective ninety
6 days following its passage and approval by the Governor, or
7 its otherwise becoming law.