

1 SB78  
2 197535-2  
3 By Senators Orr, Allen and Whatley  
4 RFD: Finance and Taxation Education  
5 First Read: 05-MAR-19

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To enact the Alabama Innovation Act; to allow a  
12 research and development enhancement grant for qualified  
13 research expenses in Alabama; to provide that no more than \$8  
14 million of grants could be awarded for the 2020 fiscal year,  
15 and \$5 million each fiscal year thereafter through the 2024  
16 fiscal year, and no eligible company or business can be  
17 awarded more than 20% of the maximum amount awarded in a  
18 single fiscal year; to require that the grant only apply to  
19 research falling within certain industries; to direct the  
20 Alabama Department of Economic and Community Affairs to  
21 develop rules to administer the program; to establish the  
22 Alabama Research and Development Enhancement Fund; to provide  
23 the fund to receive appropriations from the legislature, or  
24 from the receipt of gifts, grants, or federal funds to be  
25 expended for the purpose of the program; to provide for the  
26 criteria under which grants are to be given; and to require an  
27 annual report on the progress of the program.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. This act shall be known as the "Alabama  
3 Innovation Act".

4 Section 2. The Legislature hereby finds and declares  
5 that the health, safety, and welfare of the people of this  
6 state are dependent upon the continued encouragement,  
7 development, growth, and expansion of the private sector  
8 within the state. The Legislature finds that expanding upon  
9 current research and development activities in the state would  
10 improve the employment opportunities, products and services  
11 available to the citizens of the state. Therefore, it is  
12 declared to be the purpose of this act to encourage new and  
13 continuing efforts to conduct research and development  
14 activities within this state.

15 Section 3. For the purpose of this act, the  
16 following words and phrases shall have the following meanings:

17 (a) ADECA. The Alabama Department of Economic and  
18 Community Affairs.

19 (b) ALABAMA RESEARCH ENTITY. One or more of the  
20 following:

21 (1) A public or private university in the state;

22 (2) A university research foundation affiliated with  
23 a public or private university in the state;

24 (3) A public two-year college in the state;

25 (4) A publicly-owned hospital in the state;

1                   (5) An entity duly formed, domiciled or qualified to  
2 do business in the state that meets each of the following  
3 criteria:

4                   a. Is exempt from federal income tax under section  
5 501(c)(3) of the Internal Revenue Code of 1986, as amended;

6                   b. Is predominantly engaged in research and  
7 non-commercial development activities undertaken for the  
8 purpose of discovering information that is technological or  
9 biotechnological in nature, involves a process of  
10 experimentation, and the application of which is intended to  
11 be used in the development of a new or improved product,  
12 service or treatment;

13                   c. Has its headquarters and principal place of  
14 business in the state; and

15                   d. Has, or is anticipated to have, at least 75  
16 percent of its property and payroll in Alabama, using the  
17 property and payroll factor calculations found in Title 40.

18                   (b) APPROVED ACTIVITY. The conduct of an activity  
19 that is predominantly any one or more of the following:

20                   (1) Described by NAICS Code 1133, 115111, 2121,  
21 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482,  
22 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493,  
23 511, 5121 (other than 51213), 51221, 517, 518 (without regard  
24 to the premise that data processing and related services be  
25 performed in conjunction with a third party), 51913, 52232,  
26 54133 (if predominantly in furtherance of another activity  
27 described in this article), 54134 (if predominantly in

1 furtherance of another activity described in this article),  
2 54138, 5415, 541614, 5417, 55 (if not for the production of  
3 electricity), 561422 (other than establishments that originate  
4 telephone calls), 562213, 56291, 56292, 611512, 927 or 92811.

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

7 (3) A target of the state's economic development  
8 efforts pursuant to either of the following:

9 a. 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 b. A type listed in a regulation adopted by the  
15 Department of Commerce.

16 (c) CONSORTIUM RESEARCH EXPENSES. Any amount paid or  
17 incurred by the taxpayer to any Alabama research entity for  
18 qualified research, but not including any expenses for  
19 research activities performed outside Alabama.

20 (d) CONTRACT RESEARCH EXPENSES. Any amount paid or  
21 incurred by the taxpayer to any person (other than an employee  
22 of the taxpayer) for qualified research, but not including any  
23 of the following:

24 (1) Consortium research expenses; or

25 (2) Expenses for research activities performed  
26 outside Alabama.

1 (e) IN-HOUSE RESEARCH EXPENSES. The meaning given in  
2 26 U.S.C. § 41(b)(2), but not including wages paid or incurred  
3 to employees residing outside Alabama.

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

10 (g) QUALIFIED RESEARCH. The meaning given in 26  
11 U.S.C. § 41(d), if conducted in Alabama in pursuit of an  
12 approved activity. In applying any terms in 26 U.S.C. § 41,  
13 "qualified research" shall have the meaning given herein.

14 Section 4. (a) The Director of the ADECA is  
15 authorized to establish and administer the research and  
16 development enhancement grant program for the purpose of  
17 encouraging new and continuing efforts to conduct research and  
18 development activities within Alabama. Within 90 days of the  
19 effective date of this act, the director shall promulgate  
20 rules and policies to administer the program and begin to  
21 accept applications for grants, and shall promulgate such  
22 rules and regulations as may be necessary to meet the future  
23 needs of the grant program.

24 (b) The program shall be administered pursuant to  
25 policies developed by ADECA in compliance with this act. The  
26 policies shall provide for the awarding of grants to business  
27 enterprises that have qualified research expenses in Alabama

1 in a taxable year exceeding a base amount, provided that the  
2 business enterprise for the same taxable year claims a  
3 research credit under Section 41 or the Internal Revenue Code  
4 of 1986, as amended.

5 (c) There is hereby created the Alabama Research and  
6 Development Enhancement Fund in the State Treasury. The fund  
7 is subject to appropriations by the legislature and gifts,  
8 grants, and other donations received by ADECA for the research  
9 and development grant program or fund. ADECA may not spend  
10 appropriations for the program for purposes other than those  
11 listed in this section. Any monies appropriated to ADECA for  
12 research and development grants that are unspent at the end of  
13 a fiscal year shall be carried over for use by the program in  
14 the next fiscal year. ADECA shall develop rules ensuring that  
15 expenses incurred to administer the program must not exceed  
16 three percent (3%) of the total amount appropriated for the  
17 program in any fiscal year. Moneys in the fund shall be  
18 invested by the State Treasurer for the sole benefit of the  
19 fund.

20 (d) Individual grants awarded by ADECA under this  
21 section may only be awarded for qualified research expenses  
22 and may not exceed the lesser of: (1) 20% of the total grant  
23 funds awarded in a single fiscal year or (2) an amount equal  
24 to the sum of the following:

25 (1) 10 percent of the following:

26 a. In-house research expenses and contract research  
27 expenses for qualified research conducted in Alabama during

1 the taxable year preceding the fiscal year for which grant  
2 funds are being awarded, minus

3 b. Fifty percent of the in-house research expenses  
4 and contract research expenses conducted in Alabama, on  
5 average, over the 3 taxable years preceding the taxable year  
6 for which the grant amount is being determined.

7 (2) 25 percent of the following:

8 a. Consortium research expenses for qualified  
9 research conducted in Alabama during the taxable year  
10 preceding the fiscal year for which grant funds are being  
11 awarded, minus

12 b. Fifty percent of the consortium research expenses  
13 conducted in Alabama, on average, over the 3 taxable years  
14 preceding the taxable year for which the grant amount is being  
15 determines.

16 Subject to such limitations, grants shall be awarded  
17 pursuant to criteria established by ADECA, with priority given  
18 to qualified research expenditures supporting an approved  
19 activity as defined in Section 3 of this act.

20 (e) The first annual commencement date to submit  
21 grant applications shall be within sixty days of the effective  
22 date of this act, and shall be March 1 in each subsequent  
23 year. ADECA shall accept applications within a 150-day grant  
24 window after the annual commencement date. Applications for  
25 eligible expenses will be evaluated according to a scoring  
26 system developed by ADECA that incorporates the priorities



1 listed in this section, with grant awards published within  
2 ninety days after expiration of the filing window.

3 Section 5. (a) There is created the Alabama Research  
4 and Development Enhancement Oversight Committee. The oversight  
5 committee shall consist of the Chair of the House Ways and  
6 Means Education Committee or designee, the Chair of the Senate  
7 Finance and Taxation Education Committee or designee, two  
8 members appointed by the Speaker of the House of  
9 Representatives, two members appointed by the President Pro  
10 Tempore of the Senate, and the Director of ADECA or his or her  
11 designee. The oversight committee shall be charged with  
12 meeting at least annually and providing general oversight of  
13 the implementation and recommending further statutory changes  
14 to promote research and development within Alabama.

15 (b) The committee shall reflect the racial, gender,  
16 geographic, urban/rural, and economic diversity of the state.

17 (c) For any year in which grants are distributed  
18 under the program, ADECA shall produce a quarterly report on  
19 the status of grants under the program to the Oversight  
20 Committee, including progress toward increased research and  
21 development activities in Alabama. The report shall also be  
22 published on ADECA's website. Within 12 months of the  
23 effective date of this act, ADECA shall produce a report on  
24 the increased research and development activities supported by  
25 grant funds.

26 Section 6. The amount of research and development  
27 enhancement grants awarded by ADECA shall not exceed \$8

1 million for the 2020 fiscal year, and \$5 million each fiscal  
2 year thereafter through the 2024 fiscal year; and no taxpayer  
3 shall receive a research and development enhancement grant of  
4 more than 20% of the maximum amount awarded in a single fiscal  
5 year. The grants shall be allocated among various taxpayers  
6 using the procedures in this section.

7 (a) Each taxpayer who wishes to apply for a grant  
8 shall file an application with the department showing the  
9 amount of tax credit which the taxpayer expects in good faith  
10 to qualify for during the applicable fiscal year. No  
11 application shall show an expected claim in excess of 20% of  
12 the maximum amount to be awarded in a single fiscal year.

13 (b) As applications are submitted, the department  
14 shall approve any the department deems sufficient, until the  
15 total approved applications represent the total available  
16 grant funds for the applicable fiscal year. All applications  
17 received on the day that the total for the applicable fiscal  
18 year is reached shall receive approval for a pro rata share of  
19 the credits available at the start of that day. To the extent  
20 that the applications are not approved, the portion not  
21 approved shall be conditionally denied by the department.  
22 Taxpayers may continue to submit applications after the total  
23 for the applicable tax year is reached, and applications that  
24 the department deems sufficient shall be conditionally denied  
25 but maintained in the order received.

26 (c) If grant funds for the corresponding fiscal year  
27 are returned for any reason or if additional grant funds

1 become available, the department shall approve, in the order  
2 they were received, the applications that were conditionally  
3 denied until the approved applications represent total of  
4 available grant funds for the applicable fiscal year and  
5 timely notify benefiting taxpayers.

6 Section 7. The grant program established under this  
7 act shall be effective for the fiscal year ending September  
8 30, 2020 and shall continue through the fiscal year ending  
9 September 30, 2024, unless extended by act of the Legislature.

10 Section 8. All laws or parts of laws which conflict  
11 with this act are repealed.

12 Section 9. This act shall become effective  
13 immediately following its passage and approval by the  
14 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Finance and Taxation Education ..... 05-MAR-19

Read for the second time and placed on the calen-  
dar..... 03-APR-19

Read for the third time and passed as amended .... 09-APR-19

Yeas 33  
Nays 0

Patrick Harris,  
Secretary.