

1 HB244
2 209166-2
3 By Representative Garrett
4 RFD: Ways and Means Education
5 First Read: 02-FEB-21

SYNOPSIS: This bill would establish the Alabama Research and Development Act that would provide for a research and development tax credit to certain Alabama companies. The credit would be based on in-house research, contracted research, and consortium research expenses for qualified research conducted in Alabama.

This bill would limit the Alabama Research and Development tax credits to no more than \$25 million of credits for research and development expenses in any calendar year; and no eligible company or business could claim more than 20 percent in a single tax year.

A BILL
TO BE ENTITLED
AN ACT

To enact the Alabama Research and Development Act;
to allow a research and development tax credit for qualified

1 research expenses in Alabama; to provide that no more than \$20
2 million of tax credits for major research and development
3 expenses and \$5 million of tax credits for minor research and
4 development in any calendar year; and no one taxpayer would be
5 allowed more than 20 percent in a single tax year; to allow
6 the credits to offset the taxes in Chapters 16 and 18 of Title
7 40, Code of Alabama 1975, and estimated payments thereof; to
8 provide that the income tax credits shall not affect estimated
9 income tax payments before January 1, 2022; to provide for the
10 promulgation of rules; to provide for the coordination between
11 the availability of the federal research credit and the credit
12 herein; and to provide for an effective date.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. This act shall be known as the Alabama
15 Research and Development Act of 2021.

16 Section 2. For the purpose of this article, the
17 following words and phrases shall have the following meanings:

18 (a) ALABAMA RESEARCH ENTITY. One or more of the
19 following:

- 20 (1) A public or private university in the state;
21 (2) A university research foundation affiliated with
22 a public or private university in the state;
23 (3) A public two-year college in the state;
24 (4) A publicly-owned hospital in the state;
25 (5) An entity duly formed, domiciled or qualified to
26 do business in the state that meets each of the following
27 criteria:

1 a. Is exempt from federal income tax under 26 U.S.C.
2 § 501(c)(3),

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

10 c. Has its principal place of business in the state;
11 and

12 d. Has, or is anticipated to have, at least 75
13 percent of its property and payroll in Alabama, using the
14 property and payroll factor calculations found in Title 40,
15 Chapters 16 or 18, as appropriate.

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

18 (1) The production of biofuel as such term is
19 defined in Section 2-2-90(c)(2).

20 (2) A target of the state's economic development
21 efforts pursuant to either of the following:

22 a. The Accelerate Alabama Strategic Economic
23 Development Plan adopted in January 2012 by the Alabama
24 Economic Development Alliance, created by Executive Order
25 Number 21 of the Governor on July 18, 2011, or any amended
26 version or successor document thereto or

1 b. A type listed in a rule issued by the Department
2 of Commerce pursuant to the Alabama Administrative Procedure
3 Act. Notwithstanding the foregoing, an approved activity
4 shall not include a headquarters facility otherwise allowed as
5 an approved activity.

6 (c) CONSORTIUM RESEARCH EXPENSES. Any amount paid or
7 incurred by the taxpayer to any Alabama research entity for
8 qualified research, but not including any expenses for
9 research activities performed outside Alabama.

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

14 (1) Consortium research expenses; or

15 (2) Expenses for research activities performed
16 outside Alabama.

17 (e) DEPARTMENT. The Alabama Department of Revenue.

18 (f) IN-HOUSE RESEARCH EXPENSES. The meaning given in
19 26 U.S.C. § 41(b)(2), but not including wages paid or incurred
20 to employees working outside Alabama and not subject to the
21 Alabama individual income tax.

22 (g) MAJOR RESEARCH AND DEVELOPMENT EXPENSES.

23 (1) A taxpayer with Alabama qualified research and
24 development expenses for the taxable year in excess of \$5
25 million.

26 (h) MINOR RESEARCH AND DEVELOPMENT EXPENSES.

1 (1) A taxpayer with Alabama qualified research and
2 development expenses for the taxable year less than \$5
3 million.

4 (i) QUALIFIED RESEARCH. The meaning given in 26
5 U.S.C. § 41(d), if conducted in Alabama in pursuit of an
6 approved activity. In applying any terms in 26 U.S.C. § 41,
7 "qualified research" shall have the meaning given herein.

8 Section 3. (a) A Research and Development tax credit
9 is allowed for qualified research conducted in Alabama. The
10 tax credit shall be in an amount equal to the sum of the
11 following amounts:

12 (1) Ten percent of the following:

13 a. In-house research expenses and contract research
14 expenses for qualified research conducted in Alabama during
15 the taxable year, minus

16 b. The in-house research expenses and contract
17 research expenses conducted in Alabama, on average, over the 3
18 taxable years preceding the taxable year for which the credit
19 is being determined.

20 (2) Twenty-five percent of the following:

21 a. Consortium research expenses for qualified
22 research conducted in Alabama during the taxable year, minus

23 b. The consortium research expenses conducted in
24 Alabama, on average, over the 3 taxable years preceding the
25 taxable year for which the credit is being determined.

26 (b) The Research and Development tax credit may
27 offset the taxes levied by Chapters 16 and 18, or an estimated

1 payment of the tax due under Chapter 16 or 18, but not below
2 zero. In no event shall the credits provided for by this
3 article be allowed to reduce any estimated payment of the
4 taxes levied by Chapters 16 and 18 due for tax period ending
5 before January 1, 2022.

6 (c) All other state income tax and financial
7 institution excise tax credits shall be applied prior to the
8 application of the tax credit provided in this section.

9 Section 4. (a) If in any one tax year the approved
10 Research and Development tax credit exceeds the amount of the
11 taxpayer's applicable tax liability, the taxpayer may carry
12 forward the unused tax credit. However, no carryforward shall
13 be allowed for more than five tax years. Rules similar to
14 those used for Section 40-18-15.2 shall be applied.

15 (b) Tax credits granted to a pass-through entity
16 shall be passed through to the partners, members, or owners
17 respectively pro rata.

18 (c) A taxpayer may assign and convey the Research
19 and Development tax credit to another entity only if all of
20 the assets of the taxpayer are assigned and conveyed in the
21 same transaction.

22 (d) The tax credit shall be applied only to the
23 state portion of the tax liability and shall not offset or
24 reduce the financial institution excise tax distribution made
25 to municipalities and counties pursuant to Section 40-16-6.

1 (e) To the extent the Research and Development tax
2 credit is utilized by the taxpayer, no deduction for the
3 related expenses shall be allowed.

4 (f) Any credit allowed shall be for research and
5 development expenses in excess of the rolling three-year
6 average of previous research and development expenses.

7 Section 5. (a) The maximum amount of Research and
8 Development tax credits all taxpayers shall be allowed
9 pursuant to this act in any calendar year shall be limited to
10 the following:

11 (1) \$20 million for major research and development
12 expenses.

13 (2) \$5 million for minor research and development
14 and development expenses.

15 (b) No taxpayer shall receive a Research and
16 Development tax credit of more than 20 percent applicable
17 credit in a single tax year. The tax credits shall be
18 allocated among various taxpayers using the procedures
19 described in this section.

20 (c) Each taxpayer who wishes to claim an Research
21 and Development tax credit shall file an application with the
22 Department showing the amount of the tax credit which the
23 taxpayer expects in good faith to claim during the tax year.
24 No application and no claim shall exceed 20 percent. The
25 applications shall be submitted electronically to the
26 Department between March 15 and December 31, and such

1 applications shall apply to the tax year that begins during
2 that same calendar year.

3 (d) As applications are submitted, the Department
4 shall approve any the Department deems sufficient under this
5 article, until the total approved applications equal the \$20
6 million cap on anticipated Major Research and Development tax
7 credits and \$5 million cap on Minor Research and Development
8 tax credits. All applications received during the application
9 period up to the respective caps shall receive approval for
10 the full amount applied for dependent upon the qualifications.
11 However, if the total amount of all of the applications shall
12 exceed the \$20 million and \$5 million Research and Development
13 caps, each applicant shall receive a pro rata share of the
14 credits available. To the extent that the applications are not
15 approved by December 31, the portion not approved shall be
16 deemed denied by the Department.

17 (e) Following the completion of the qualifying
18 research expenditures, the taxpayer shall submit records to
19 the Department sufficient to document qualification for the
20 credit. After reviewing taxpayer records and finding them
21 satisfactory to document qualification for the credit, the
22 Department shall issue a certificate to the taxpayer for the
23 amount of credit not to exceed the amount originally applied
24 for.

25 Section 6. All filings made by a private party with
26 the Department shall be made according to the rules and using
27 forms promulgated by the Department. Any such filing shall be

1 treated as a tax return, subject to taxpayer privacy
2 restrictions as well as any penalties that may be imposed by
3 the Department.

4 (b) Nothing in this article shall be construed to
5 make available to any taxpayer any right to the benefits
6 conferred by this article absent strict compliance with this
7 article.

8 (c) The Department is authorized to issue rules
9 under the Alabama Administrative Procedure Act as necessary to
10 implement and administer the provisions of this article. This
11 article shall be construed generally to conform to 26 U.S.C. §
12 41, except for percentage reductions specified therein. In the
13 event that 26 U.S.C. § 41 should be repealed or suspended by
14 Congress in any year, the credit provided in this article
15 shall refer to and be based on the version of 26 U.S.C. § 41
16 as it existed on the last day prior to the effective date of
17 such repeal or suspension.

18 Section 7. Reporting requirements.

19 (a) (1) Effective January 1, 2023, taxpayers
20 receiving tax credits pursuant to this act shall file an
21 annual informational report in a manner as prescribed by the
22 Department. All information submitted to the Department by
23 taxpayers claiming or seeking certification of a credit shall
24 be subject to the confidentiality provisions of Section
25 40-2A-10.

26 (2) The information on the reports required by this
27 section shall be consistent with the information required by

1 the Legislature pursuant to Section 40-1-50, and rules adopted
2 thereunder. Aggregated information provided pursuant to this
3 section is exempt from the confidentiality provisions of
4 Section 40-2A-10 and shall be provided by the Department to
5 the Legislature in accordance with Section 40-1-50 and rules
6 adopted by the Department.

7 Section 8. Unless extended by an act of the
8 legislature, this act shall sunset on December 31, 2026.

9 Section 9. This act shall become effective for tax
10 years beginning on or after January 1, 2022, following its
11 passage and approval by the Governor, or its otherwise
12 becoming law.