

**House Ways and Means Education Reported Substitute
for HB293**



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A BILL
TO BE ENTITLED
AN ACT

Relating to port credits; to amend Sections 40-18-401 and 40-18-403, Code of Alabama 1975, to expand the cap of the port credit and to expand tax incentives for businesses and enterprises who increase their cargo volume through Alabama public ports.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-18-401 and 40-18-403, Code of Alabama 1975, are amended to read as follows:

"§40-18-401

(a) The port credit provided for in Section 40-18-403 is created by this article and is allowed upon strict compliance with the provisions herein.

(b) Prior to the allowance of the port credit, an application shall be filed with the commission, on a form promulgated by the commission.

(1) The application shall be filed by the port facility user desiring to claim the credit.

(2) The commission shall establish deadlines for applications. Such applications shall solicit whatever information the commission deems important to its



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29 determination of whether granting a port credit will create
30 new, high paying jobs in the state, bring substantial capital
31 to the state, increase the usage of a port facility, promote
32 the development of clusters of businesses in the state, or
33 promote the economic development efforts of the state.

34 (3) Upon review of the applications, the commission may
35 approve such applications as shall result in port credits
36 being awarded so as not to exceed twelve million dollars
37 (\$12,000,000) ~~twenty million dollars (\$20,000,000)~~ for the life
38 of the program, and shall not exceed five million dollars
39 (\$5,000,000) in a fiscal year.

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

42 (c) Prior to claiming a port credit, the company shall
43 submit to the Department of Commerce a certification
44 containing information adequate to prove that the company is
45 entitled to the credit. Following such examination as it deems
46 necessary, the Department of Commerce may certify the
47 information and deliver the same to the Department of Revenue.
48 Thereafter, the Department of Revenue shall allow the tax
49 credit.

50 (d) (1) Nothing in this article shall be construed to
51 constitute a guarantee or assumption by the state of any debt
52 of any company nor to authorize the credit of the state to be
53 given, pledged, or loaned to any company.

54 (2) Nothing in this article shall be construed to make
55 available to any company any right to the benefits conferred
56 by this article absent strict compliance with this article.



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57 (3) Nothing in this article shall be construed to
58 change or lessen the requirements for claiming jobs act
59 incentives under the Alabama Jobs Act, Section 40-18-370, et
60 seq. Companies claiming the jobs act incentives must strictly
61 comply with the Alabama Jobs Act.

62 (4) All filings made by a private party with the
63 commission or any department of state government shall be made
64 using forms adopted by the commission or department. Any such
65 filing shall be treated as a tax return, subject to penalties
66 imposed by the Department of Revenue.

67 (5) Nothing in this article shall be construed to limit
68 the powers otherwise existing for the Department of Revenue to
69 audit and assess any company claiming a port credit."

70 "§40-18-403

71 (a) If approved by the commission, a port credit is
72 allowed, in an amount equal to ~~fifty dollars (\$50) per TEU,~~
73 ~~three dollars (\$3) per net ton, four cents (\$0.04) per~~
74 ~~kilogram for air freight, or two dollars and ninety-one cents~~
75 ~~(\$2.91) per VEU, multiplied by the following~~the cargo volume
76 calculated from subdivisions (1) and (2) as follows multiplied
77 by the appropriate amount shown in the table in subsection
78 (b) :

79 (1) The port user's cargo volume in the 12-month period
80 for which the commission has granted approval for the port
81 user to claim the port credit, minus

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

83 (b) Port credit amount.

<u>Increase in</u>	<u>TEU</u>	<u>Net Ton</u>	<u>Kilogram</u>	<u>VEU</u>



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85	<u>cargo volume</u>			<u>for Air</u>	
86	<u>over base</u>			<u>Freight</u>	
87	<u>under 4.99</u>				
88		<u>\$50</u>	<u>\$3</u>	<u>\$0.04</u>	<u>\$2.91</u>
89	<u>percent</u>				
90	<u>5 to 14.99</u>				
91		<u>\$75</u>	<u>\$4.5</u>	<u>\$0.06</u>	<u>\$4.37</u>
92	<u>percent</u>				
93	<u>15 to 24.99</u>				
94		<u>\$100</u>	<u>\$6</u>	<u>\$0.08</u>	<u>\$5.82</u>
95	<u>percent</u>				
96	<u>25 percent</u>				
97		<u>\$125</u>	<u>\$7.5</u>	<u>\$0.1</u>	<u>\$7.28</u>
98	<u>or greater</u>				

99 (c) The commission shall decrease the amount of the port
100 credit to ensure that the anticipated revenues for the port
101 facility and state will exceed the amount of the port credit
102 sought. The port credit may be conditioned on whatever
103 requirements the commission shall impose. The port credits
104 shall only be available to the extent that a port facility
105 user ships more than 105 percent of its cargo volume from the
106 12-month period immediately preceding the port facility user's
107 application. Moreover, the port credit shall only be available
108 to the extent a port facility user ships more than 10 TEUs,
109 for cargo measured by TEU, more than 75 net tons, for cargo
110 measured by net ton, more than fifteen thousand (15,000)
111 kilograms for air cargo measured by kilograms, or more than
112 400 VEU, for cargo measured by VEU.

113 ~~(e)~~ (d) The following methods may be used to realize the
114 port credit:

115 (1) The port credit may offset the tax levied by this
116 chapter, but not below zero. The port credit may also offset



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117 the estimated payments of the tax levied by this chapter, but
118 not below zero. In no event shall the port credits be allowed
119 to reduce any estimated payment of the tax levied by this
120 chapter before October 1, 2016. In any one year, if the port
121 credit exceeds the amount of tax liability, the port user may
122 carry forward the unused port credit. No carryforward shall be
123 allowed for more than five years. Rules similar to those used
124 for Section 40-18-15.2 shall be applied.

125 (2) A company may assign and convey a port credit to
126 another company if substantially all of the assets of the
127 company are assigned and conveyed in the same transaction.
128 Proof of such transfer shall be submitted to the Department of
129 Revenue.

130 (e) To the extent that the port credit is utilized by
131 the port user or by a transferee company, no deduction for the
132 related expenses shall be allowed.

133 (f) For any company which enters into an economic
134 development project agreement with the state, the project
135 agreement may provide for an allocation to the company of any
136 port credits which have not been allocated pursuant to this
137 article. Allocations made pursuant to this subsection shall
138 meet all of the following requirements:

139 (1) Allocations shall be made by the Governor and
140 approved by the commission.

141 (2) Allocations for a project shall not exceed three
142 million dollars (\$3,000,000).

143 (3) Allocations shall be granted only to a new
144 warehouse or distribution facility which commits to investing



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145 at least twenty million dollars (\$20,000,000) at a single site
146 and to creating 75 net new jobs in Alabama.

147 (4) Port credits may not be used until the Department
148 of Commerce has received satisfactory proof that the capital
149 investment and job creation requirements have been satisfied.

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

152 (6) Allocations shall not exceed the per unit amounts
153 stated in subsection (b) ~~one hundred dollars (\$100) per TEU,~~
154 ~~three dollars (\$3) per net ton, four cents (\$0.04) per~~
155 ~~kilogram for air freight, or two dollars and ninety-one cents~~
156 ~~(\$2.91) per VEU.~~

157 (7) Anticipated revenues for the state shall exceed the
158 port credit granted, and the project agreement shall provide
159 for recapture of all or part of the port credit should the
160 company default on its obligations in the project agreement."

161 Section 2. The provisions of this act shall be
162 effective for all tax years beginning after December 31, 2023.

163 Section 3. This act shall become effective January 1,
164 2024, following its passage and approval by the Governor, or
165 its otherwise becoming law.