

**HB293 ENROLLED**



1 MSFCHW-3

2 By Representatives Brown, Stringer, Lipscomb, Marques, Givens,  
3 Holk-Jones, Clarke, Kirkland, Travis, Starnes, Jones, Hassell,  
4 Shirey, Hulsey, Collins, Pringle, Drummond, Bracy, Wilcox,  
5 Lomax

6 RFD: Ways and Means Education

7 First Read: 11-Apr-23

8 2023 Regular Session



## HB293 Enrolled

1 Enrolled, An Act,

2

3

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

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 "§40-18-401

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

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

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

21 (2) The commission shall establish deadlines for  
22 applications. Such applications shall solicit whatever  
23 information the commission deems important to its  
24 determination of whether granting a port credit will create  
25 new, high paying jobs in the state, bring substantial capital  
26 to the state, increase the usage of a port facility, promote  
27 the development of clusters of businesses in the state, or  
28 promote the economic development efforts of the state.



## HB293 Enrolled

29           (3) Upon review of the applications, the commission may  
30 approve such applications as shall result in port credits  
31 being awarded so as not to exceed twelve million dollars  
32 (\$12,000,000) ~~twenty million dollars (\$20,000,000)~~ for the  
33 life of the program, and shall not exceed five million dollars  
34 (\$5,000,000) in a fiscal year.

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

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

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

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

52           (3) Nothing in this article shall be construed to  
53 change or lessen the requirements for claiming jobs act  
54 incentives under the Alabama Jobs Act, Section 40-18-370, et  
55 seq. Companies claiming the jobs act incentives must strictly  
56 comply with the Alabama Jobs Act.



HB293 Enrolled

57 (4) All filings made by a private party with the  
58 commission or any department of state government shall be made  
59 using forms adopted by the commission or department. Any such  
60 filing shall be treated as a tax return, subject to penalties  
61 imposed by the Department of Revenue.

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

65 "§40-18-403

66 (a) If approved by the commission, a port credit is  
67 allowed, in an amount equal to ~~fifty dollars (\$50) per TEU,~~  
68 ~~three dollars (\$3) per net ton, four cents (\$0.04) per~~  
69 ~~kilogram for air freight, or two dollars and ninety-one cents~~  
70 ~~(\$2.91) per VEU, multiplied by the following the cargo volume~~  
71 ~~calculated from subdivisions (1) and (2) as follows multiplied~~  
72 ~~by the appropriate amount shown in the table in subsection~~  
73 ~~(b):~~

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

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

78 (b) Port credit amount.

<u>Increase in cargo volume over base cargo volume</u>	<u>TEU</u>	<u>Net Ton</u>	<u>Kilogram for Air Freight</u>	<u>VEU</u>
<u>under 4.99 percent</u>	<u>\$50</u>	<u>\$3</u>	<u>\$0.04</u>	<u>\$2.91</u>



HB293 Enrolled

89 90 91	<u>5 to 14.99</u> <u>percent</u>	<u>\$75</u>	<u>\$4.5</u>	<u>\$0.06</u>	<u>\$4.37</u>
92 93 94	<u>15 to 24.99</u> <u>percent</u>	<u>\$100</u>	<u>\$6</u>	<u>\$0.08</u>	<u>\$5.82</u>
95 96 97	<u>25 percent</u> <u>or greater</u>	<u>\$125</u>	<u>\$7.5</u>	<u>\$0.1</u>	<u>\$7.28</u>

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

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

114            (1) The port credit may offset the tax levied by this  
115 chapter, but not below zero. The port credit may also offset  
116 the estimated payments of the tax levied by this chapter, but  
117 not below zero. In no event shall the port credits be allowed  
118 to reduce any estimated payment of the tax levied by this  
119 chapter before October 1, 2016. In any one year, if the port



## HB293 Enrolled

120 credit exceeds the amount of tax liability, the port user may  
121 carry forward the unused port credit. No carryforward shall be  
122 allowed for more than five years. Rules similar to those used  
123 for Section 40-18-15.2 shall be applied.

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

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

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

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

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

142 (3) Allocations shall be granted only to a new  
143 warehouse or distribution facility which commits to investing  
144 at least twenty million dollars (\$20,000,000) at a single site  
145 and to creating 75 net new jobs in Alabama.

146 (4) Port credits may not be used until the Department  
147 of Commerce has received satisfactory proof that the capital



## HB293 Enrolled

148 investment and job creation requirements have been satisfied.

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

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

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

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

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



**HB293 Enrolled**

165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190

---

Speaker of the House of Representatives

---

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 17-May-23, as amended.

John Treadwell  
Clerk

Senate

---

**01-Jun-23**

Passed