

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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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



## House Ways and Means Education Reported Substitute for HB293

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.



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

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>



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

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 VEUs, 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



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

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



## House Ways and Means Education Reported Substitute for HB293

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.