

**SB299 ENROLLED**



1 RUOCMN-3  
2 By Senator Orr  
3 RFD: Conference Committee on SB299  
4 First Read: 09-May-23  
5 2023 Regular Session



## SB299 Enrolled

1 Enrolled, An Act,

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3 Relating to the Coal Production Tax Credit; to amend  
4 Section 40-18-220, Code of Alabama 1975, to allow the credit  
5 to be claimed against both income and utility services taxes;  
6 to allow the credits to be earned by all persons that increase  
7 their production of coal mined in Alabama from the prior year;  
8 to allow any unused credits to be carried forward for no more  
9 than five years; to establish sunset dates for tax incentive  
10 programs; to establish future sunset dates for extended tax  
11 incentive programs; and to provide required guidelines for all  
12 new incentive legislation.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Section 40-18-220, Code of Alabama 1975, is  
15 amended to read as follows:

16 "§40-18-220

17 (a) For the tax years beginning on and after January 1,  
18 1995, every person~~corporation, whether a "subchapter S"~~  
19 ~~corporation, as defined by the 1995 Internal Revenue Code, or~~  
20 ~~not, foreign or domestic,~~ that is doing business in Alabama,  
21 as a producer of coal mined in Alabama, shall be allowed a  
22 coal production credit to be used as provided in subsection  
23 (b)~~against the tax imposed by Section 40-18-2,~~ in the amount  
24 of one dollar (\$1) per ton of increased production of coal  
25 over the previous year's production of coal as set out herein  
26 below. Such tax credit shall be based on coal produced after  
27 January 1, 1995, provided the coal was mined in Alabama as  
28 certified by the producer of the coal. The amount of the total



## SB299 Enrolled

29 of credit in any one year shall be based on the number of tons  
30 of Alabama coal produced by the person~~corporation~~ in the year  
31 which exceeds the number of tons of Alabama coal produced by  
32 the person~~corporation~~ in calendar year 1994. In the event a  
33 person~~corporation~~ did not produce Alabama coal during calendar  
34 year 1994, such person~~corporation~~ must establish a base year  
35 by producing Alabama coal for 12 consecutive months.  
36 Thereafter, such person~~corporation~~ shall be eligible for the  
37 tax credit as specified hereinabove over the base year  
38 production.

39 (b) The coal production credit described in subsection  
40 (a) shall be used as follows:

41 (1) To offset the income taxes found in this chapter, or  
42 as an estimated tax payment of income taxes;

43 (2) To offset the taxes imposed by Sections 40-21-82 and  
44 40-21-102; or

45 (3) To offset some combination of the foregoing, so long  
46 as the same credit is used only once.

47 (c) (1) The coal production credit may be claimed as a  
48 credit against the taxes in subsection (b) that are actually  
49 paid. In any one year, if the credit exceeds the amount of  
50 taxes that are owed by the person, the person may carry the  
51 credit forward. No carryforward shall be allowed for more than  
52 five years. Rules similar to those used for Section 40-18-15.2  
53 shall be applied.

**SB299 Enrolled**



54       (2) A person that is taxed as a flow-through entity may  
55       allocate the coal production credit among some or all of the  
56       owners in any manner specified, regardless of whether the  
57       allocation follows rules similar to 26 U.S.C. § 704(b) and the  
58       regulations thereunder. The owners may then use their  
59       allocated share of the coal production credit to offset any of  
60       the taxes listed in subsection (b), as provided in subdivision  
61       (1). This subdivision shall be liberally construed to apply to  
62       multiple levels of companies, to allow the coal production  
63       credit to be used by those persons bearing the tax burdens of  
64       the production of coal in Alabama, and such companies shall  
65       include, but shall in no way be limited to, flow-through  
66       entities, employee stock ownership plans, mutual funds, real  
67       estate investment trusts, and it shall also apply to offset  
68       the income tax liability of employee/owners of a flow-through  
69       entity owned by an employee stock ownership plan trust.

70       (3) Prior to claiming the coal production credit as  
71       provided in subdivision (c) (1), the person producing Alabama  
72       coal shall submit to the Department of Revenue a certification  
73       as to the amount of increased production of coal for the  
74       calendar year over the previous year's production of coal.  
75       Following such examination as it deems necessary, the  
76       Department of Revenue shall allow the coal production credit.



## SB299 Enrolled

77           (d) The coal production tax credit shall be subject to  
78           the reporting requirements of Section 40-1-50.

79           Section 2. The Brownfield Development Tax Abatement  
80           Act, Chapter 9C, of Title 40, commencing with Section 40-9C-1,  
81           Code of Alabama 1975, is repealed effective December 31, 2028,  
82           unless extended by an act of the Legislature prior to that  
83           date for no more than five additional years.

84           Section 3. The Rural Physician Tax Credit, Article 4A,  
85           commencing with Section 40-18-130, Chapter 18, of Title 40,  
86           Code of Alabama 1975, is repealed effective December 31, 2028,  
87           unless extended by an act of the Legislature prior to that  
88           date for no more than five additional years.

89           Section 4. The Coal Production Tax Credit, Article 8,  
90           commencing with Section 40-18-220, Chapter 18, of Title 40,  
91           Code of Alabama 1975, is repealed effective December 31, 2028,  
92           unless extended by an act of the Legislature prior to that  
93           date for no more than five additional years.

94           Section 5. The Reemployment Act of 2010, Article 10,  
95           commencing with Section 40-18-270, Chapter 18, of Title 40,  
96           Code of Alabama 1975, is repealed effective December 31, 2028,  
97           unless extended by an act of the Legislature prior to that  
98           date for no more than five additional years.

99           Section 6. The Full Employment Act of 2011, Article 11,  
100           commencing with Section 40-18-290, Chapter 18, of Title 40,  
101           Code of Alabama 1975, is repealed effective December 31, 2028,  
102           unless extended by an act of the Legislature prior to that  
103           date for no more than five additional years.

104           Section 7. The Veterans Employment Act, Article 13,



## SB299 Enrolled

105 commencing with Section 40-18-320, Chapter 18, of Title 40,  
106 Code of Alabama 1975, is repealed effective December 31, 2028,  
107 unless extended by an act of the Legislature prior to that  
108 date for no more than five additional years.

109 Section 8. The Irrigation Equipment Tax Credit, Article  
110 14, commencing with Section 40-18-340, Chapter 18, of Title  
111 40, Code of Alabama 1975, is repealed effective December 31,  
112 2028, unless extended by an act of the Legislature prior to  
113 that date for no more than five additional years.

114 Section 9. The Entertainment Industry Incentive Act of  
115 2009, Article 3, commencing with Section 41-7A-40, Chapters  
116 7A, of Title 41, Code of Alabama 1975, is repealed effective  
117 December 31, 2028, unless extended by an act of the  
118 Legislature. Prior to the repeal of the incentive, the  
119 Department of Commerce shall report to the Legislature  
120 beginning in 2023 and annually thereafter, regarding the  
121 entertainment industry incentives, in accordance with Section  
122 40-1-50.

123 Section 10. The Alabama Enterprise Zone Act, Article 2,  
124 commencing with Section 41-23-20, Chapter 23, of Title 41,  
125 Code of Alabama 1975, is repealed effective December 31, 2028,  
126 unless extended by an act of the Legislature prior to that  
127 date for no more than five additional years.

128 Section 11. The repealing of the incentives listed in  
129 Sections 2 through 10 shall only affect the availability of  
130 the tax credits after December 31, 2028, and shall not cause a  
131 reduction or suspension of any credits awarded on or prior to  
132 December 31, 2028.



## SB299 Enrolled

133           Section 12. (a) Beginning in the 2024 Regular Session  
134 of the Legislature, all new tax credit legislation shall  
135 include the following:

136           (1) For every bill enacting a new tax credit, a tax  
137 credit performance statement which must state the legislative  
138 purpose for the new tax credit. The tax credit performance  
139 statement must indicate one or more of the following as the  
140 legislative purpose of the new tax credit:

141           a. Tax credits intended to induce certain designated  
142 behavior by taxpayers.

143           b. Tax credits intended to improve industry  
144 competitiveness.

145           c. Tax credits intended to create or retain jobs.

146           d. Tax credits intended to reduce structural  
147 inefficiencies in the tax structure.

148           e. Tax credits intended to provide tax relief for  
149 certain businesses or individuals.

150           (2) A statement providing that new tax credits shall  
151 expire on the first day of the calendar year following the  
152 calendar year that is five years from the effective date of  
153 the tax credit. With respect to any new property tax  
154 exemption, the exemption does not apply to taxes levied for  
155 collection beginning in the calendar year following the  
156 calendar year that is five years from the effective date of  
157 the tax credit.

158           (3) A statement establishing the limit on the amount of  
159 tax credits that may be provided during any applicable period  
160 of the tax credit.



## SB299 Enrolled

161 (4) A statement limiting the number of years for  
162 carryforward of unused credits to no more than five years.

163 (5) A statement limiting the transfer or sale of tax  
164 credits.

165 (b) For tax years beginning after December 31, 2024,  
166 taxpayers claiming a new tax credit must report the amount of  
167 the tax credit claimed by the taxpayer in accordance with the  
168 taxpayer's regular tax reporting duties to the Department of  
169 Revenue. The amount of the tax credit claimed shall be  
170 considered as confidential taxpayer information, and the  
171 Department of Revenue shall not be required under this section  
172 to disclose confidential information.

173 (c) The term tax credit as used in this section shall  
174 mean a credit allowed against the amount of tax imposed by  
175 Chapter 16 or Chapter 18 of Title 40.

176 Section 13. The provisions of this act are severable.  
177 If any part of this act is declared invalid or  
178 unconstitutional, the declaration shall not affect the part  
179 which remains.

180 Section 14. This act shall become effective on the  
181 first day of the third month following its passage and  
182 approval by the Governor, or its otherwise becoming law,  
183 except that Section 1 shall become effective for tax years  
184 beginning on or after January 1, 2023, immediately following  
185 its passage and approval by the Governor, or its otherwise  
186 becoming law.





**SB299 Enrolled**

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB299

Senate 18-May-23

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 06-Jun-23

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

Patrick Harris,  
Secretary.

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House of Representatives  
Amended and passed: 01-Jun-23

House of Representatives  
Passed 06-Jun-23, as amended by Conference Committee Report.

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By: Senator Orr