

1 HB192
2 209653-4
3 By Representative Poole
4 RFD: Ways and Means Education
5 First Read: 02-FEB-21
6 PFD: 01/28/2021

1 Growing Alabama Credits; to clarify the reservation of credits
2 for projects in targeted or jumpstart counties; to allow the
3 credit to be taken by owners of S corporations and other
4 partnerships; to provide rulemaking authority; and to provide
5 for a sunset of the Growing Alabama Credits after calendar
6 year 2023.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 40-18-375, 40-18-376,
9 40-18-376.3, 40-18-382, 40-18-383, 40-18-400, and 40-18-403,
10 of the Code of Alabama 1975, are amended to read as follows:

11 "§40-18-375.

12 "(a) (1) If provided for in the project agreement and
13 in accordance with the terms therein, the incentivized company
14 is allowed a jobs credit against utility taxes, in an annual
15 amount equal to 3 percent of the wages paid to eligible
16 employees during the prior year. The incentive period shall be
17 10 years.

18 "(2) If the incentivized company is engaged in
19 pharmaceutical, biomedical, medical technology or medical
20 supplies manufacturing or their related research and
21 development activities, the incentivized company is allowed a
22 jobs credit against utility taxes, in an annual amount equal
23 to 4 percent of the wages paid to eligible employees during
24 the prior year. The incentive period shall be 10 years. This
25 would apply to companies that predominantly conduct an
26 activity described by NAICS code 3254, 339112, or 339113, to
27 include related research and development.

1 "(b) The project agreement shall provide that one of
2 the following methods shall be used to realize the benefits of
3 the jobs credit:

4 "(1)a. The jobs credit may be paid to the
5 incentivized company as a refund out of utility taxes during
6 the incentive period, regardless of the amount of utility
7 taxes actually paid by the incentivized company.

8 "b. For each year of the incentive period for the
9 jobs credit, the incentivized company shall submit to the
10 Department of Commerce a certification as to the wages paid to
11 eligible employees during the prior year. Following such
12 examination as it deems necessary, the Department of Commerce
13 may certify the information and deliver the same to the
14 Department of Revenue. Thereafter, the Department of Revenue
15 shall calculate the correct refund and issue it directly to
16 the incentivized company.

17 "(2)a. The jobs credit may be claimed as a credit
18 against utility taxes actually paid. In any one year, if the
19 credit exceeds the amount of taxes that are allowed to be
20 offset by the project agreement and that are owed by the
21 incentivized company, the incentivized company may carry the
22 credit forward, to the extent allowed in the project
23 agreement. No carryforward shall be allowed for more than five
24 years. Rules similar to those used for Section 40-18-15.2
25 shall be applied.

26 "b. Prior to claiming the jobs credit as provided in
27 this subdivision, the incentivized company shall submit to the

1 Department of Commerce a certification as to the wages paid to
2 eligible employees during the prior year. Following such
3 examination as it deems necessary, the Department of Commerce
4 may certify the information and deliver same to the Department
5 of Revenue. Thereafter, the Department of Revenue shall allow
6 the jobs credit.

7 "(c) The realization methods in subsection (b) shall
8 not create debts of the state within the meaning of Section
9 213 of the Official Recompilation of the Constitution of
10 Alabama of 1901, as amended.

11 "(d) The Department of Finance shall ~~promulgate~~
12 adopt regulations to ensure that the credit in no case would
13 reduce the distribution for the Alabama Special Mental Health
14 Trust Fund.

15 "§40-18-376.

16 "(a) If provided for in the project agreement, the
17 incentivized company is allowed an investment credit in an
18 annual amount equal to 1.5 percent of the capital investment
19 incurred as of the beginning of the incentive period, to be
20 used as follows:

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

23 "(2) To offset the financial institution excise tax
24 found in Chapter 16;

25 "(3) To offset the insurance premium tax levied by
26 Section 27-4A-3(a), or as an estimated payment of insurance
27 premium tax;

1 "(4) To offset utility taxes; or

2 "(5) To offset state license taxes levied by Article
3 2 of Chapter 21 of Title 40 of the Code of Alabama 1975.

4 "~~(5)~~ (6) To offset some combination of the
5 foregoing, so long as the same credit is used only once.

6 "The incentive period shall begin no earlier than
7 the placed-in-service date. The incentive period shall be 10
8 years. Should only some portion of a tax year be included in
9 the incentive period, the amount of the investment credit
10 shall be prorated on a daily basis.

11 "(b) A project agreement may specify any one or more
12 of the following methods by which the investment credit shall
13 be realized by the incentivized company, so long as a credit
14 is not utilized more than once:

15 "(1)a. The investment credit may be claimed as a
16 credit against the taxes in subsection (a) that are actually
17 paid. In any one year, if the credit exceeds the amount of
18 taxes that are allowed to be offset by the project agreement
19 and that are owed by the incentivized company, the
20 incentivized company may carry the credit forward, to the
21 extent allowed in the project agreement. No carryforward shall
22 be allowed for more than five years. Rules similar to those
23 used for Section 40-18-15.2 shall be applied.

24 "b. Prior to claiming the investment credit as
25 provided in this subdivision, the incentivized company shall
26 submit to the Department of Commerce a certification as to its
27 capital investment as of the dates specified in the project

1 agreement. Following such examination as it deems necessary,
2 the Department of Commerce may certify the information and
3 deliver the same to the Department of Revenue. Thereafter, the
4 Department of Revenue shall allow the investment credit.

5 "(2) The project agreement may authorize an
6 incentivized company that is taxed as a flow-through entity to
7 allocate the credit among some or all of the owners in any
8 manner specified, regardless of whether the allocation follows
9 rules similar to 26 U.S.C. § 704(b) and the regulations
10 thereunder. The owners may then use their allocated share of
11 the investment credit to offset any of the taxes listed in
12 subsection (a), as provided in subdivision (1). This
13 subdivision shall be liberally construed to apply to multiple
14 levels of companies, to allow the investment credits to be
15 used by those persons bearing the tax burdens of the
16 qualifying project, and such companies shall include but shall
17 in no way be limited to flow-through entities, employee stock
18 ownership plans, mutual funds, real estate investment trusts,
19 and it shall also apply to offset the income tax liability of
20 employee/owners of a flow-through entity owned by an employee
21 stock ownership plan trust.

22 "(3) All or part of the first three years of the
23 investment credit may be transferred by the incentivized
24 company and applied by another person or company as follows:

25 "a. A transfer of the credit shall be made by
26 written, notarized contract.

1 "b. No such transfer shall occur before the contract
2 is approved by the Secretary of Commerce. In determining
3 whether to approve any transfer, the Secretary shall make all
4 of the following findings:

5 "(i) That any year's investment credit will not be
6 purchased by more than three transferees, unless such
7 limitation is found by the Secretary of Commerce unnecessarily
8 to limit the class of potential transferees;

9 "(ii) That the proposed transfer will enhance the
10 economic benefits of the qualifying project; and

11 "(iii) That the transfer is at a value of at least
12 85 percent of the present value of the credits.

13 "Upon making affirmative findings on the criteria
14 set forth above, the Secretary of Commerce shall recommend to
15 the Governor that the transfer should be approved. Information
16 about the proposed transfer shall be forwarded to the
17 Governor, and the Governor may include provisions about the
18 transfer in the project agreement, or in an amendment thereto
19 executed by the Governor and the incentivized company.

20 "c. If a transfer is approved, the incentivized
21 company shall submit to the Department of Commerce the
22 following:

23 "(i) Certifications as to its capital investment as
24 of the dates specified in the project agreement. Following
25 such examination as it deems necessary, the Department of
26 Commerce may certify the information and deliver the same to
27 the Department of Revenue.

1 "(ii) Certified information about the transfers,
2 including identifying information about the transferees and
3 the amount of credit each transferee should claim. Following
4 such examination as it deems necessary, the Department of
5 Commerce may certify the information and deliver the same to
6 the Department of Revenue.

7 "d. Upon receipt of the certifications from the
8 Department of Commerce as required by paragraph c., the
9 Department of Revenue shall thereafter allow the appropriate
10 amount of the investment credit to offset the tax liability of
11 the transferee for any of the taxes listed in subsection (a)
12 and, for any project agreements entered into after January 1,
13 2021 only, state license taxes levied by Article 2 of Chapter
14 21 of Title 40 of the Code of Alabama 1975. In any one year,
15 if the investment credit exceeds the amount of taxes that are
16 allowed to be offset and that are owed by the transferee, the
17 transferee may carry the credit forward for five years. A
18 transferee may not make a subsequent transfer of the credit.

19 "e. If a credit is transferred, an incentivized
20 company that is later determined by the Secretary of Commerce
21 to have defaulted under the project agreement shall be liable
22 for the underpayment of tax attributable to the credit and for
23 penalties and interest thereon. Unless the purchase of the
24 credits is determined to have been made in a fraudulent
25 manner, or is a transfer in anticipation of bankruptcy,
26 insolvency, or closure, a transferee shall not be liable for

1 the unpaid tax attributable to the credit, or for penalties or
2 interest thereon.

3 "(c) The realization methods in subsection (b) shall
4 not create debts of the state within the meaning of Section
5 213 of the Official Recompilation of the Constitution of
6 Alabama of 1901, as amended.

7 "(d) (1) To the extent the investment credit is used
8 to offset a financial institution excise tax liability, in
9 making the report required by Section 40-16-6(d), the
10 financial institution receiving the investment credit shall
11 not take into account the qualifying project, and the
12 Department of Finance shall adopt rules to ensure that the
13 credit in no case would reduce the distribution for
14 municipalities and counties.

15 "(2) To the extent the investment credit is used to
16 offset an insurance premium tax liability, the Department of
17 Finance shall adopt rules to ensure that the credit would
18 reduce the distribution for the Education Trust Fund, but in
19 no case would the investment credit reduce the distributions
20 for the State General Fund or the Alabama Special Mental
21 Health Trust Fund.

22 "(3) To the extent the investment credit is used to
23 offset liability for the tax imposed by Section 40-21-82 or
24 Article 2 of Chapter 21 of Title 40 of the Code of Alabama
25 1975, the Department of Finance shall adopt rules to ensure
26 that the credit in no case would reduce the distribution for
27 the Alabama Special Mental Health Trust Fund.

1 "§40-18-376.3.

2 "(a) (1) This section shall be applicable to a
3 technology company so long as there is a project agreement
4 which provides that Alabama is or will become the company's
5 headquarters, the place of residence of its top three
6 executives, and the place of residence of at least 75 percent
7 of its employees.

8 "(2) In making the findings required by Section
9 40-18-373(1), a technology company that proposes a qualifying
10 project shall be an approved company for purposes of this
11 section only if the Secretary of Commerce makes the additional
12 finding that the qualifying project will increase the economic
13 diversity of, or otherwise benefit, the state.

14 "(3) A qualifying project shall be deemed to be in
15 existence notwithstanding the requirements of Section
16 40-18-372 so long as at least 10 new employees are employed at
17 the qualifying project, absent a finding of extraordinary
18 circumstances by the Secretary of Commerce.

19 "(b) If provided for in the project agreement, the
20 following shall be allowed to any company which meets all the
21 criteria in subsection (a):

22 ~~(1) A qualifying project shall be deemed to be in~~
23 ~~existence notwithstanding the requirements of Section~~
24 ~~40-18-372 so long as at least five new employees are employed~~
25 ~~at the qualifying project, absent a finding of extraordinary~~
26 ~~circumstances by the Secretary of Commerce. A jobs credit~~
27 ~~against utility taxes, in an annual amount equal to 4 percent~~

1 of the wages paid to eligible employees during the prior year.
2 The incentive period shall be 10 years.

3 "(2) ~~The jobs credit provided in Section~~
4 ~~40-18-375(a) shall include an additional 2 percent above that~~
5 ~~otherwise allowed.~~ An investment credit as provided in Section
6 40-18-376.

7 "(c) A "technology company" is any company which
8 meets all the criteria in subdivision (1) or (2):

9 "(1) A company which earns at least 75 percent of
10 its revenues from either of the following:

11 "a. Activities within subsector 518; industry group
12 5112, 5121 (other than 51213), 5415, or 5417; or industry
13 51913 of the 2012 North American Industry Classification
14 System, or any similar classification system developed in
15 conjunction with the United States Department of Commerce or
16 Office of Management and Budget.

17 "b. The use of technology to develop new coding or
18 processes for the creation or delivery of goods or services in
19 the following fields, or any additional activities determined
20 by the Secretary of Commerce to be beneficial to the
21 enhancement of businesses rooted in either of the following
22 fields:

23 "1. Any of the fields of education, healthcare,
24 energy, agriculture, infrastructure, software, robotics,
25 nutrition, aerospace, automotive, or financial services.

26 "2. Any fields related to science, technology,
27 engineering, or mathematics.

1 "(2) A company which, for a fixed term, educates and
2 mentors early-stage technology companies recruited to a
3 location in Alabama, with the goal of accelerating the
4 companies' development and growth.

5 "§40-18-382.

6 "The incentives authorized by this article shall not
7 be available for qualifying projects for which project
8 agreements have not been executed on or prior to ~~December 31,~~
9 ~~2020~~ July 31, 2023, unless the Legislature, ~~by joint~~
10 ~~resolution or other applicable action of both houses, votes~~
11 enacts legislation to continue or reinstate the incentives for
12 new projects after that date. No action or inaction on the
13 part of the Legislature shall reduce or suspend any incentive
14 awarded pursuant to this article in any past or future
15 calendar year with respect to qualifying projects for which
16 project agreements have been executed on or prior to ~~December~~
17 ~~31, 2020~~ July 31, 2023, it being the sole intention of this
18 section that failure of the Legislature to ~~adopt a joint~~
19 ~~resolution or other applicable action of both houses~~ enact
20 legislation continuing the incentives authorized by this
21 article for periods after ~~December 31, 2020~~ July 31, 2023,
22 shall affect only the availability of the incentives to
23 qualifying projects for which project agreements have not been
24 executed on or prior to ~~December 31, 2020~~ July 31, 2023, and
25 shall not affect qualifying projects for which project
26 agreements have been executed on or prior to ~~December 31, 2020~~
27 July 31, 2023.

1 "§40-18-383.

2 "(a) At no time prior to the calendar year ending
3 December 31, 2020, shall the annualized balance of outstanding
4 jobs act incentives exceed \$300 million, which amount would
5 increase to three hundred twenty-five million dollars
6 (\$325,000,000) for the calendar year ending December 31, 2021
7 and three hundred fifty million dollars (\$350,000,000) for the
8 calendar year ending December 31, 2022, unless the
9 Legislature, ~~by joint resolution or other applicable action of~~
10 ~~both houses, votes~~ enacts legislation to allow additional jobs
11 act incentives. Of the above annualized balance, twenty
12 million dollars (\$20,000,000) shall apply to qualifying
13 projects located in targeted or jumpstart counties as
14 described in Section 40-18-376.1.

15 "(b) Jobs act incentives shall not be available to
16 any project for which substantial construction activities have
17 begun by July 2, 2015.

18 "(c) Jobs act incentives under this article shall
19 not be available for any qualifying project unless at least 80
20 percent of the eligible employees created by the qualifying
21 project are employed full time.

22 "§40-18-400.

23 "For the purposes of this article, the following
24 words and phrases shall have the following meanings:

25 "(1) BASE CARGO VOLUME. The greater of the
26 following:

1 "a. One hundred five percent of the cargo volume of
2 a port facility user in the 12-month period immediately
3 preceding the application.

4 "b. Ten TEUs~~7~~ for cargo measured by TEU, ~~or~~ 75 net
5 tons~~7~~ for cargo measured by net ton, or 400 VEUs for cargo
6 measured by VEU.

7 "(2) CARGO VOLUME. The total amount of
8 noncontainerized general cargo or containers, measured in
9 TEUs, in net tons, or in kilograms, or in VEUs transported by
10 way of a waterborne ship, air cargo aircraft, or railroad
11 through a port facility; provided that such cargo shall be
12 owned by the port facility user at the time the port facility
13 is used.

14 "(3) COMMISSION. The Renewal of Alabama Commission
15 created by Section 40-18-402.

16 "(4) COMPANY. Anyone or anything which has the
17 powers to conduct the activities required to claim the port
18 credit.

19 "(5) INLAND PORTS. Physical sites located away from
20 traditional land, air, and coastal borders with the vision to
21 facilitate and process international and domestic trade
22 through strategic investment in multi-modal transportation
23 assets and by promoting value-added services as goods move
24 through the supply chain.

25 "(6) PORT FACILITY. Any ~~publicly owned~~ type of deep
26 draft ship terminal facility located within this state's ports
27 of entry, including publicly owned inland ports, through which

1 cargo is transported by way of a waterborne ship, air cargo
2 aircraft, or railroad, to or from destinations inside or
3 outside this state and which handles cargo owned by third
4 parties in addition to cargo owned by the port facility's
5 owner.

6 "(7) PORT CREDIT. The credit provided for in Section
7 40-18-403.

8 "(8) PORT FACILITY USER. A company engaged in
9 manufacturing, warehousing, or distribution which uses a port
10 facility.

11 "(9) TEU. A "20-foot equivalent unit" volumetric
12 measure based on the size of a container 20 feet long by eight
13 feet wide by eight feet, six inches high.

14 "(10) VEHICLE. Any motorized vehicle as defined in
15 Section 32-1-1.1.

16 "(11) VEU. A "Vehicle Equivalent Unit" volumetric
17 measure of one (1) cubic meter.

18 "§40-18-403.

19 "(a) If approved by the commission, a port credit is
20 allowed, in an amount equal to fifty dollars (\$50) per TEU,
21 three dollars (\$3) per net ton, ~~or~~ four cents (\$0.04) per
22 kilogram for air freight, or two dollars and ninety-one cents
23 (\$2.91) per VEU, multiplied by the following:

24 "(1) The port user's cargo volume in the 12-month
25 period for which the commission has granted approval for the
26 port user to claim the port credit, minus

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

1 "(b) The commission shall decrease the amount of the
2 port credit to ensure that the anticipated revenues for the
3 port facility and state will exceed the amount of the port
4 credit sought. The port credit may be conditioned on whatever
5 requirements the commission shall impose. The port credits
6 shall only be available to the extent that a port facility
7 user ships more than 105 percent of its cargo volume from the
8 12-month period immediately preceding the port facility user's
9 application. Moreover, the port credit shall only be available
10 to the extent a port facility user ships more than 10 TEUs,
11 for cargo measured by TEU, more than 75 net tons, for cargo
12 measured by net ton, or more than fifteen thousand (15,000)
13 kilograms for air cargo measured by kilograms, or more than
14 400 VEUs, for cargo measured by VEU.

15 "(c) The following methods may be used to realize
16 the port credit:

17 "(1) The port credit may offset the tax levied by
18 this chapter, but not below zero. The port credit may also
19 offset the estimated payments of the tax levied by this
20 chapter, but not below zero. In no event shall the port
21 credits be allowed to reduce any estimated payment of the tax
22 levied by this chapter before October 1, 2016. In any one
23 year, if the port credit exceeds the amount of tax liability,
24 the port user may carry forward the unused port credit. No
25 carryforward shall be allowed for more than five years. Rules
26 similar to those used for Section 40-18-15.2 shall be applied.

1 "(2) A company may assign and convey a port credit
2 to another company if substantially all of the assets of the
3 company are assigned and conveyed in the same transaction.
4 Proof of such transfer shall be submitted to the Department of
5 Revenue.

6 "(d) To the extent that the port credit is utilized
7 by the port user or by a transferee company, no deduction for
8 the related expenses shall be allowed.

9 "(e) For any company which enters into an economic
10 development project agreement with the state, the project
11 agreement may provide for an allocation to the company of any
12 port credits which have not been allocated pursuant to this
13 article. Allocations made pursuant to this subsection shall
14 meet all of the following requirements:

15 "(1) Allocations shall be made by the Governor and
16 approved by the commission.

17 "(2) Allocations for a project shall not exceed
18 three million dollars (\$3,000,000).

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

23 "(4) Port credits may not be used until the
24 Department of Commerce has received satisfactory proof that
25 the capital investment and job creation requirements have been
26 satisfied.

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

3 "(6) Allocations shall not exceed one hundred
4 dollars (\$100) per TEU, three dollars (\$3) per net ton, ~~or~~
5 four cents (\$0.04) per kilogram for air freight, or two
6 dollars and ninety one cents (\$2.91) per VEU.

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

12 Section 2. Sections 3 through 9 shall be known and
13 may be cited as the Growing Alabama Act.

14 Section 3. For the purposes of this act, the
15 following words and phrases shall have the following meanings:

16 (1) ACCELERATOR. A company which, for a fixed term,
17 educates and mentors early-stage technology companies
18 recruited to a location in Alabama, with the goal of
19 accelerating the companies' development and growth.

20 (2) CAPITAL IMPROVEMENTS. Construction and
21 rehabilitation expenses of a capital nature at an inland port
22 or intermodal facility, the dredging of waterways in the
23 immediate vicinity of an inland port, and the expansion of
24 onsite storage facilities at an inland port or intermodal
25 facility.

1 (3) ECONOMIC DEVELOPMENT ACTIVITIES. Activities and
2 initiatives which enhance the use of, and flow of goods
3 through, an inland port or intermodal facility.

4 (4) ECONOMIC DEVELOPMENT ORGANIZATION. A local
5 economic development organization or a state economic
6 development organization.

7 (5) GROWING ALABAMA CREDIT. The credit provided for
8 in subsection (a) of Section 6.

9 (6) INDUSTRY OR BUSINESS. An entity which would
10 conduct at a site an activity that is primarily described in
11 Section 40-18-372(1), Code of Alabama 1975.

12 (7) INLAND PORT. Any port on a navigable river away
13 from traditional land, air, and coastal borders.

14 (8) INTERMODAL FACILITY. Any facility which
15 interconnects two or more different modes of air, rail, or
16 road traffic serving multiple customers, and which involves
17 storage facilities.

18 (9) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION.
19 Organizations which are determined by the Department of
20 Commerce to meet both of the following criteria: a. The
21 organization is an Alabama entity not operating for a profit,
22 including, but not limited to, a municipality or county, an
23 industrial board or authority, a chamber of commerce, or some
24 other foundation or Alabama nonprofit corporation charged with
25 improving a community or region of the state. b. The
26 organization has a record of supporting or otherwise

1 participating in economic development activities in some part
2 of Alabama.

3 (10) RENEWAL OF ALABAMA COMMISSION. The Renewal of
4 Alabama Commission created by Section 40-18-402, Code of
5 Alabama 1975.

6 (11) SITE. Real property owned by a local economic
7 development organization and intended for use by an industry
8 or business.

9 (12) STATE ECONOMIC DEVELOPMENT ORGANIZATION.
10 Organizations which are determined by the Department of
11 Commerce to be an Alabama entity not operating for a profit
12 which is charged with improving the state or a region of the
13 state and has a record of supporting or otherwise
14 participating in economic development activities in the state.

15 Section 4. (a) (1) A local economic development
16 organization which owns a site may apply to the Department of
17 Commerce for funding to solve an inadequacy involving the
18 site. The application by the local economic development
19 organization shall include at least one of the following:

20 a. If there is a pending expression of interest
21 about the site from an industry or business, a list of the
22 site preparation or public infrastructure work needed to make
23 the site acceptable to the industry or business.

24 b. If the site has been offered to one or more
25 industries or businesses but the offer did not result in the
26 industry or business locating on the site, a list of the site
27 preparation or public infrastructure work which, if it had

1 been completed, would have made the site acceptable to the
2 industries or businesses.

3 c. If the site is an industrial or research park
4 which needs connections to interstates, highways, roadways,
5 rail systems, or sewer, fiber, electrical, gas, or water
6 infrastructure, a list of the site preparation or
7 infrastructure work needed.

8 d. Capital improvements or economic development
9 activities at an inland port or intermodal facility, as
10 described in Section 3; provided that the application is
11 accompanied by an economic impact report on such improvements
12 or activities.

13 e. Any site improvement or public infrastructure
14 work in census tracts that meet the definition of low-income
15 communities found in 26 U.S.C. 45D(e).

16 (2) An economic development organization may apply
17 to the Department of Commerce for funding to undertake any of
18 the following issues:

19 a. The creation, operation, or support of an
20 accelerator for technology companies, provided that the
21 application is accompanied by an economic impact report.
22 Technology companies shall include companies which earn or
23 reasonably expect to earn at least 75% of their revenues from
24 sources described in Section 40-18-376.3(c)(1).

25 b. The construction, maintenance, promotion,
26 operation, management, leasing, and subleasing of an
27 agricultural center which includes a multi-use facility and

1 related commercial and noncommercial structures for livestock,
2 equestrian, small animal shows and events, spectator events,
3 trade shows, educational conferences, agricultural and
4 agricultural related industries, educational, demonstrational
5 or training purposes, educational and training conferences or
6 events, recreational vehicle rallies, recreational vehicle
7 multi-day parking, hosting of corporate and non-corporate
8 organization meetings, use as fair grounds, operation of
9 retail activities, and other events and facilities expected to
10 draw participants and spectators from states located across
11 the southeastern United States, with a projected total annual
12 economic impact upon completion of all phases of the
13 agricultural center at least thirty-five million dollars
14 (\$35,000,000) and with the related and supporting
15 infrastructure and facilities having a projected capital
16 expenditure upon completion of all phases of the agricultural
17 center of at least one hundred million dollars (\$100,000,000);
18 provided that the application is accompanied by an economic
19 impact report on the agricultural center.

20 c. The creation, operation, or support of programs
21 designed to provide funding or other resources for businesses
22 which are described in Section 40-18-376.4(c).

23 (b) For any site preparation or public
24 infrastructure work provided in subdivision (a)(1), the
25 application shall include quotes for the completion of such
26 work, following compliance with the procedures set forth by
27 the Department of Economic and Community Affairs, as if the

1 organization were disbursing state funds received from such
2 department.

3 (c) The application provided in paragraph (a)(1) a.
4 or b. shall include an estimate of the number of jobs, wages,
5 and capital investment which would have been undertaken by the
6 industries or businesses referred to in paragraph (a)(1) a. or
7 b.

8 (d) The application provided in subsection (a) shall
9 include proof that the economic development organization has
10 in full force and effect a conflict of interest policy
11 consistent with that found in the instructions to Form 1023
12 issued by the Internal Revenue Service.

13 (e) The application provided in subsection (a) shall
14 include a notarized affirmation by an officer of the economic
15 development organization that the submission of the
16 application did not violate the conflict of interest policy
17 referred to in subsection (d).

18 Section 5. (a) Following a review, if the Department
19 of Commerce should approve the application provided in
20 subsection (a) of Section 4, it shall forward the application
21 to the Renewal of Alabama Commission.

22 (b) The Renewal of Alabama Commission shall consider
23 the application and shall approve it if it deems it worthy of
24 approval. As to improvements at industrial sites, the
25 commission shall give preference to sites with at least 1,000
26 acres of available space. As to applications for projects
27 located in communities which have the potential to provide

1 additional funding separate from the Growing Alabama Credits,
2 the commission shall take into consideration whether such
3 separate funding is to be provided to the project which is the
4 subject of the application. Meetings of the commission are
5 subject to Chapter 25A of Title 36, Code of Alabama 1975.
6 Notwithstanding the foregoing, the commission may meet by
7 telephone or some other telecommunications device so long as
8 members of the public are allowed the opportunity to listen to
9 or otherwise observe the commission's deliberations.

10 (c) The approval of an application by the commission
11 shall specify the amount of money which the economic
12 development organization is allowed to receive so that it can
13 complete the work specified in the application.

14 (d) Following approval by the commission, the
15 Department of Commerce shall enter into an agreement with the
16 economic development organization which shall do all of the
17 following:

18 (1) Require the economic development organization to
19 use funding received as a result of this law only for the
20 purposes approved by the commission as expressed in the
21 agreement.

22 (2) Require the economic development organization to
23 make periodic reports, not more often than annually, to the
24 Department of Commerce and the commission, as required by the
25 commission, on the disposition of the funds. As to a project
26 described in subdivision (a)(1), of Section 4, the report
27 shall include information on the marketing of the site, and

1 the ultimate use of the site until such time as it makes a
2 final report. As to a project related to inland ports or
3 intermodal facilities as described in paragraph (a)(1) d. of
4 Section 4 or a project related to a technology company or
5 agricultural center as described in subdivision (a)(2) of
6 Section 4, the report shall include an economic impact report.

7 (3) Require the economic development organization to
8 provide a review of its financial accounts as directed by the
9 Renewal of Alabama Commission.

10 (e) For any approved applications, the Department of
11 Commerce shall notify the Department of Revenue of the
12 information specified in subsection (c).

13 (f) The Department of Commerce shall publish on its
14 website a list of all approved applications and a list of the
15 economic development organizations which made the approved
16 applications.

17 Section 6. (a) A taxpayer is allowed a Growing
18 Alabama Credit to be applied against all of the following:

19 (1) To offset the income taxes levied in this
20 chapter, or as an estimated tax payment of income taxes.

21 (2) To offset the state portion of the financial
22 institution excise tax levied in Chapter 16 of Title 40 of the
23 Code of Alabama 1975.

24 (3) To offset the insurance premium tax levied by
25 subsection (a) of Section 27-4A-3, Code of Alabama 1975.

26 (4) To offset state license taxes levied by Article
27 2 of Chapter 21 of Title 40 of the Code of Alabama 1975.

1 (b) In no event shall the Growing Alabama Credit
2 cause a taxpayer's tax liability to be reduced by more than 50
3 percent. Unused credits may be carried forward for no more
4 than five years.

5 (c) Growing Alabama Credits shall be granted to
6 taxpayers using an online system administered by the
7 Department of Revenue. The online system shall allow taxpayers
8 to agree to make a cash contribution to an economic
9 development organization which was approved by the Renewal of
10 Alabama Commission, as provided in Section 5. The online
11 system shall ensure that credits are not granted for
12 contributions to an economic development organization in
13 excess of the amounts approved by the Renewal of Alabama
14 Commission, as provided in Section 5.

15 (d) The cumulative amount of funding approved
16 pursuant to this section shall not exceed twenty million
17 dollars (\$20,000,000) in a calendar year. Of that amount, no
18 more than four million dollars (\$4,000,000) of funding in the
19 aggregate may be approved for accelerator programs as
20 described in Section 40-18-376.3 (c) (2), Code of Alabama 1975.

21 (e) The Renewal of Alabama Commission shall reserve
22 at least 25 percent of the amounts specified in subsection (c)
23 for projects located in targeted or jumpstart counties as
24 defined in Section 40-18-376.1, Code of Alabama 1975. In the
25 event applications are not received and credits are not
26 allocated for projects in these areas by the close of the

1 second quarter of the program year, the funds may revert for
2 allocations of other project applications.

3 (f) To the extent that a Growing Alabama Credit is
4 used by a taxpayer, the taxpayer shall not be allowed any
5 deduction which would have otherwise been allowed for the
6 taxpayer's contribution. Credits may only be claimed by the
7 donating individual or corporate entity and may not be
8 assigned or transferred to any other taxpayer. For purposes of
9 this section, an individual taxpayer includes an individual
10 who is a shareholder of an Alabama S corporation or a partner
11 or member of a Subchapter K entity that made a contribution to
12 an economic development organization which was approved by the
13 Renewal of Alabama Commission.

14 (g) The Department of Finance shall adopt rules to
15 ensure that the Growing Alabama Credit in no case would reduce
16 the distribution for the Alabama Special Mental Health Trust
17 Fund by using any unencumbered funds.

18 Section 7. (a) Upon receipt of funding provided by
19 the tax credit process in Section 6, the economic development
20 organization shall proceed with the work that was specified in
21 the application required by Section 4.

22 (b) (1) As to a project described in subdivision
23 (a) (1) of Section 4, the economic development organization
24 shall report to the Department of Commerce upon the completion
25 of the site preparation or public infrastructure work, upon
26 the transfer of the site to an industry or business, and at

1 other times as may be required or requested by the Department
2 of Commerce.

3 (2) As to a project described in subdivision (a) (2)
4 of Section 4, the economic development organization shall
5 report to the Department of Commerce upon the completion of
6 the work and at such times as may be required or requested by
7 the Department of Commerce.

8 (c) The Department of Commerce shall make an annual
9 report on the use of funds pursuant to this act to the Chair
10 of the House Ways and Means Education Committee, the Chair of
11 the Senate Finance and Taxation Education Committee, and the
12 members of the Joint Legislative Advisory Committee on
13 Economic Incentives established by Section 40-18-379, Code of
14 Alabama 1975, at the times, and in the manner, requested by
15 the committee.

16 Section 8. (a) All filings and applications made
17 with any department of the state government shall be made
18 using forms promulgated by such department. Any such filing
19 shall be treated as a tax return, subject to penalties imposed
20 by the Department of Revenue.

21 (b) Nothing in this act shall be construed to
22 constitute a guarantee or assumption by the state of any debt
23 of any company nor to authorize the credit of the state to be
24 given, pledged, or loaned to any company.

25 (c) Nothing in this act shall be construed to make
26 available to any taxpayer any right to the benefits conferred
27 by this act absent strict compliance with this act.

1 (d) Nothing in this act shall be construed to limit
2 the powers otherwise existing for the Department of Revenue to
3 audit and assess a taxpayer claiming the Growing Alabama
4 Credit.

5 (e) Nothing in this act shall be construed to change
6 or lessen the requirements for claiming jobs act incentives
7 under the Alabama Jobs Act in Article 16 of Chapter 18 of
8 Title 40 of the Code of Alabama 1975. Companies claiming the
9 jobs act incentives must strictly comply with Article 16 of
10 Chapter 18 of Title 40 of the Code of Alabama 1975.

11 (f) The Department of Commerce and Department of
12 Revenue are authorized to adopt rules as necessary to
13 implement and administer this act.

14 Section 9. The Growing Alabama Credits provided in
15 this act shall not be available for qualifying applicants as
16 described in this act, for which applications are not approved
17 on or prior to July 31, 2023, unless the Legislature enacts
18 legislation to extend the date. This shall only affect the
19 availability of credits for applications not approved on or
20 prior to July 31, 2023, and shall not cause a reduction or
21 suspension of any credits awarded on or prior to July 31,
22 2023.

23 Section 10. A new section 40-18-376.4 is added to
24 Article 16, Chapter 18 of Title 40, Code of Alabama 1975, to
25 read as follows:

26 §40-18-376.4.

1 (a) This section shall be applicable to an
2 underrepresented company, as defined herein. In making the
3 findings required by Section 40-18-373(1), an underrepresented
4 company that proposes a qualifying project shall be an
5 approved company for purposes of this section only if the
6 Secretary of Commerce makes the additional finding that the
7 qualifying project will increase economic diversity and will
8 benefit the state.

9 (b) If provided for in the project agreement, the
10 following shall be allowed to any company which meets all the
11 criteria in subsection (a):

12 (1) Absent a finding of extraordinary circumstances
13 by the Secretary of Commerce, a qualifying project shall be
14 deemed to be in existence notwithstanding the requirements of
15 Section 40-18-372 so long as 10 new jobs are created.

16 (2) A jobs credit against utility taxes, in an
17 annual amount equal to 4 percent of the wages paid to eligible
18 employees during the prior year.

19 (3) The investment credit provided in Section
20 40-18-376(a) shall have an incentive period of 15 years.

21 (c) An "underrepresented company" is any company
22 which meets all the criteria in the following paragraph (1) or
23 (2):

24 (1) The company is a for-profit business
25 headquartered in a community eligible for investment through
26 the federal New Markets Tax Credit program under 26 USC
27 45D(e), has fewer than 10 employees at the time the project

1 agreement is executed, and has average gross revenues of less
2 than \$500,000 in the company's three years prior to the
3 execution of the project agreement; or

4 (2) The company is a for-profit business that is
5 independently owned and controlled and is at least 51 percent
6 owned and controlled by one or more underrepresented persons
7 or, in the case of a publicly-owned business, the company is a
8 for-profit business of which at least 51 percent of the stock
9 is owned and controlled by one or more underrepresented
10 persons and whose daily management and operations are under
11 the control of one or more underrepresented persons. As used
12 herein, an underrepresented person is a United States citizen
13 who is a woman, or an African American.

14 Section 11. Any action taken prior to the effective
15 date of this act by the Governor by proclamation or otherwise
16 or any action taken by any agency or department to extend
17 benefits or credits under the Alabama Jobs Act or the Growing
18 Alabama Act is hereby ratified and confirmed.

19 Section 12. The provisions of this act are
20 severable. If any part of this act is declared invalid or
21 unconstitutional, that declaration shall not affect the part
22 which remains.

23 Section 13. This act shall become effective
24 immediately upon its passage and approval by the Governor, or
25 its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
Education..... 02-FEB-21

Reported from Ways and Means Educa-
tion as 03-FEB-21

Read for the third time and passed
as amended..... 04-FEB-21

Yeas 94, Nays 1, Abstains 0

Jeff Woodard
Clerk