

1 HB58
2 164950-3
3 By Representative Baker
4 RFD: Economic Development and Tourism
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1 taxes; to provide that the investment credit may be claimed as
2 a credit against taxes paid with a carryforward for earned but
3 unused amounts; to permit special allocations of investment
4 credits; to make transferable the first three years of the
5 investment credit, in certain limited circumstances; to
6 provide for the distribution of the financial institution
7 excise, insurance premium, and utility taxes when a company
8 claims the jobs credit, the investment credit, or both; to
9 make the Jobs Act Incentives available only for projects that
10 fall within certain designated activities, that involve
11 certain minimum new job levels, and that meet certain other
12 standards; to require the Secretary of Commerce and Governor
13 to make certain findings before approving a company to receive
14 incentives; to require a project agreement; to allow the
15 Governor to decrease the amounts and durations of the Jobs Act
16 Incentives to ensure that the net economic benefits of the
17 qualifying project would be positive; to provide for proof
18 that incentives are due to be granted; to provide for the
19 promulgation of forms for information to be submitted to a
20 department of state government, and that such submissions
21 shall be treated as tax returns; to provide for audits of
22 companies claiming the Jobs Act Incentives; to require the
23 clawback of incentives in certain cases; to create a permanent
24 Joint Legislative Advisory Committee on Economic Incentives;
25 to provide for the powers of such committee; to provide for
26 the sunset of the act; to make legislative findings; to
27 provide for the promulgation of regulations; to provide that

1 the incentives shall not be considered securities; to provide
2 that this act shall not constitute a guarantee by the state of
3 company debt nor the lending of the credit of the state to any
4 company; to prohibit the adverse construction of the
5 provisions of the act; to provide that no company shall have
6 any right to incentives that are granted absent strict
7 compliance with this act; to provide that no cause of action
8 shall exist for the denial of any benefit under this act; to
9 create a new Article 16 of Chapter 18 of Title 40, Code of
10 Alabama 1975; to amend Sections 40-21-87 and 40-21-107, Code
11 of Alabama 1975; to repeal Articles 7, 7A and 9 of Chapter 18
12 of Title 40, Code of Alabama 1975, for new projects; to
13 provide for a transition from prior incentives; to allow for
14 certain legislative appropriations in the event a portion of
15 the act is held to be invalid; to provide for the severability
16 of invalid provisions; to provide for the repeal of
17 conflicting laws; to provide for an effective date.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This act shall be known and may be cited
20 as the "Alabama Jobs Act".

21 Section 2. The legislature makes the following
22 findings:

23 (a) The economic well-being of the citizens of the
24 state will be enhanced by the increased development and growth
25 of employment within Alabama.

26 (b) It is in the best interests of the state to
27 provide certain incentives to allow the state to foster

1 economic development through the recruitment of quality
2 projects and the expansion of existing businesses within
3 Alabama.

4 (c) The incentives provided for in this act do not
5 raise any taxes for any individuals or businesses in Alabama
6 under state law.

7 (d) The incentives provided in this act will allow
8 the state to encourage the creation of new jobs that may not
9 otherwise exist within the State of Alabama.

10 (e) The incentives provided in this act will
11 increase revenues for the state without increasing taxes.

12 (f) The Constitution of the State of Alabama grants
13 the legislature the authority to approve and authorize
14 exemptions, exclusions, deductions and credits from taxation
15 in order to define the net proceeds of any tax payable under
16 state law.

17 (g) The Constitution of the State of Alabama was
18 framed, and the laws of the state were enacted, with the goal
19 of protecting, encouraging, and developing individual
20 enterprise.

21 (h) The incentives provided in this act will not
22 decrease the salary paid to any teacher.

23 (i) The powers to be granted and the purposes to be
24 accomplished by this act will create an environment for the
25 recruitment of quality projects and the expansion of existing
26 businesses within Alabama.

1 (j) Economic development through tax and financial
2 incentives benefits the citizens of the state and is a public
3 purpose of the state.

4 Section 3. A new Article 16 of Chapter 18 of Title
5 40, Code of Alabama 1975, is created to read as follows:

6 § 40-18-370. In addition to the definitions found at
7 Section 40-18-1, the following words and phrases shall have
8 the following meanings:

9 (1) APPROVED COMPANY. Any company determined by the
10 Secretary of Commerce and the Governor to meet the criteria
11 provided in Section 40-18-373.

12 (2) CAPITAL INVESTMENT. All costs and expenses
13 incurred by the incentivized company in connection with the
14 acquisition, construction, installation and equipping of a
15 qualifying project, if such costs are required to be
16 capitalized for purposes of the federal income tax, determined
17 without regard to any rule that permits expenditures properly
18 chargeable to a capital account to be treated as current
19 expenditures. However, for any project involving the
20 extraction of natural resources, the capital investment shall
21 not include the costs of acquiring land, land recording fees,
22 architectural and engineering services, environmental studies
23 and environmental mitigation.

24 (3) COMPANY. Anyone or anything which has the powers
25 to own a project and have employees.

1 (4) ELIGIBLE EMPLOYEES. Those employee positions set
2 forth in a project agreement that will be the result of new
3 jobs created by or through a qualifying project.

4 (5) EMPLOYEES. Some or all of those persons employed
5 and residing in Alabama:

6 a. Who are being paid directly by an approved
7 company, related company, common paymaster, joint venturer or
8 leasing company for working at a qualifying project;

9 b. Whom the approved company, related company,
10 common paymaster, joint venturer or leasing company identifies
11 as its employees to the U.S. Internal Revenue Service, the
12 Department of Revenue or the Department of Labor on returns or
13 reports filed with the foregoing, including, but not limited
14 to, IRS Form 941; and

15 c. Who are assigned to a qualifying project for a
16 period of at least one year.

17 (6) INCENTIVE PERIOD. The period or periods of time
18 during which an incentivized company can receive one or more
19 of the Jobs Act Incentives.

20 (7) INCENTIVIZED COMPANY. An approved company and
21 any related company that are allowed to claim either or both
22 of the Jobs Act Incentives as provided for in the project
23 agreement.

24 (8) INVESTMENT CREDIT. The annual incentive provided
25 in Section 40-18-376.

26 (9) JOBS ACT INCENTIVES. The jobs credit and the
27 investment credit as authorized and provided for in this act.

1 (10) JOBS CREDIT. The annual incentive provided in
2 Section 40-18-375.

3 (11) NAICS CODE. Any sector, subsector, industry
4 group, industry or national industry of the 2012 North
5 American Industry Classification System, or any similar
6 classification system developed in conjunction with the United
7 States Department of Commerce or Office of Management and
8 Budget.

9 (12) PROJECT. Any land, building or other
10 improvements, and all real and personal properties, whether or
11 not contiguous and whether or not previously in existence, if
12 in Alabama and if deemed necessary or useful in connection
13 with an activity listed in Section 40-18-372(a).

14 (13) PROJECT AGREEMENT. The agreement entered into
15 between an approved company and the Governor establishing the
16 terms and conditions for the provision of the Jobs Act
17 Incentives, as provided for in Section 40-18-374.

18 (14) QUALIFYING PROJECT. Any project to be
19 undertaken by an approved company that satisfies Section
20 40-18-372.

21 (15) RELATED COMPANY. Any company that is under
22 common ownership, management or control with a company or an
23 approved company, as the case may be.

24 (16) UTILITY TAXES. The taxes imposed by Sections
25 40-21-82 and 40-21-102.

26 (17) WAGES. Total wages of an employee (including
27 gross wages, salaries, overtime and bonuses), defined by

1 reference to Section 25-4-16(b), without application of
2 Sections 25-4-16(b) (1), 25-4-16(b) (2)a., 25-4-16(b) (3) and
3 25-4-16(b) (4).

4 § 40-18-371. For a company to receive one or both of
5 the Jobs Act Incentives provided in this article, all of the
6 following shall occur:

7 (a) There must be a qualifying project predominantly
8 conducting an activity specified in Section 40-18-372(a);

9 (b) The qualifying project shall create at least the
10 number of new jobs specified in Section 40-18-372(b);

11 (c) The company proposing the qualifying project
12 must be an approved company, as provided in Section 40-18-373;

13 (d) The approved company and the Governor must enter
14 into a project agreement, as provided in Section 40-18-374;

15 (e) If the incentivized company is allowed a jobs
16 credit, the proof of wages actually paid shall have been
17 delivered and certified, as provided in Section 40-18-375; and

18 (f) If the incentivized company is allowed an
19 investment credit, the proof of capital actually invested
20 shall have been delivered and certified, as provided in
21 Section 40-18-376.

22 § 40-18-372. A qualifying project must be found by
23 the Secretary of Commerce to conduct an activity specified in
24 subsection (a) and to meet the minimum standard set forth in
25 subsection (b).

26 (a) A qualifying project must predominantly conduct
27 an activity that is any one or more of the following:

1 (1) Described by NAICS Code 1133, 115111, 2121,
2 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482,
3 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493,
4 511, 5121 (other than 51213), 51221, 517, 518 (without regard
5 to the premise that data processing and related services be
6 performed in conjunction with a third party), 51913, 52232,
7 54133 (if predominantly in furtherance of another activity
8 described in this article), 54134 (if predominantly in
9 furtherance of another activity described in this article),
10 54138, 5415, 541614, 5417, 55 (if not for the production of
11 electricity), 561422 (other than establishments that originate
12 telephone calls), 562213, 56291, 56292, 611512, 927 or 92811.

13 (2) The production of biofuel as such term is
14 defined in Section 2-2-90(c)(2).

15 (3) The conduct of original investigations
16 undertaken on a systematic basis to gain new knowledge or the
17 application of research findings or other scientific knowledge
18 to create new or significantly improved products or processes.

19 (4) The national or regional headquarters for a
20 company that conducts significant business operations outside
21 the state and that will serve as the principal office of the
22 company's principal operating officer with chief
23 responsibility for the daily business operations of the
24 company.

25 (5) A commercial enterprise which is open to the
26 public not less than 120 days during a calendar year and is
27 designed to attract visitors from inside or outside of the

1 State of Alabama, typically for its inherent cultural value,
2 historical significance, natural or man-made beauty, or
3 entertainment or amusement opportunities, including, but not
4 limited to, a cultural or historical site, a botanical garden,
5 a museum, a wildlife park or aquarium open to the public that
6 cares for and displays a collection of animals or fish, an
7 amusement park, a convention hotel and conference center, a
8 water park, or a spectator venue or arena.

9 (5) (6) A target of the state's economic development
10 efforts pursuant to the Accelerate Alabama Strategic Economic
11 Development Plan adopted in January 2012 by the Alabama
12 Economic Development Alliance, created by Executive Order
13 Number 21 of the Governor on July 18, 2011, or any amended
14 version or successor document thereto.

15 (6) (7) A type listed in a regulation adopted by the
16 Department of Commerce, other than a regulation submitted as
17 an emergency rule.

18 Notwithstanding the foregoing, a qualifying project
19 may not engage predominantly in farming activities involving
20 trees, animals or crops, and a qualifying project may not
21 engage predominantly in the retail sale of tangible personal
22 property or ~~services.~~ services, and may not be a shopping
23 center, restaurant, movie theater, bowling alley, fitness
24 center, miniature golf course, nightclub, gaming facility, or
25 establishment serving the local community. However, if such
26 ~~retail sales~~ excluded activities are not the predominant
27 activity at the project, and if the project is otherwise a

1 qualifying project, then the project agreement may provide
2 that the capital investment may include costs related to
3 ~~retail sales~~ excluded activities that are ancillary to the
4 primary business conducted as part of the project. This
5 provision shall not be deemed to exclude customer service
6 centers, call centers or headquarters otherwise allowed by
7 this subsection (a).

8 (b) A qualifying project shall create a significant
9 number of new jobs for the area in which the qualifying
10 project shall be located. Absent a finding of extraordinary
11 circumstances by the Secretary of Commerce, a qualifying
12 project shall employ either of the following number of new
13 employees:

14 (1) Any number of new employees, for a qualifying
15 project in which the predominant activity involves chemical
16 manufacturing, data centers, engineering, design, or research;
17 or

18 (2) At least 50 new employees, for all other
19 qualifying projects.

20 § 40-18-373. In order for a company to be an
21 approved company, all of the following shall occur:

22 (a) For any company that proposes a qualifying
23 project, the Secretary of Commerce shall make all of the
24 following findings:

25 (1) That the project is in fact a qualifying
26 project;

1 (2) That the qualifying project will not decrease,
2 directly or indirectly, Alabama's exports; and

3 (3) That the amount of tax incentives sought are
4 exceeded by anticipated revenues for the state, including
5 income, property, business privilege, utility, gross receipts,
6 sales, and use tax revenues that are generated by the economic
7 activity resulting from the project, as they arise from the
8 following aspects of the qualifying project:

9 a. Construction activities related to the qualifying
10 project;

11 b. The purchase of building materials and the
12 initial equipping of the qualifying project;

13 c. The subsequent equipping of the qualifying
14 project; and

15 d. The operation of the qualifying project.

16 (b) Upon making affirmative findings on the criteria
17 set forth in subsection (a) that are applicable, the Secretary
18 of Commerce shall recommend to the Governor that the company
19 be designated as an approved company. The name of the company
20 and information collected about it shall be forwarded to the
21 Governor.

22 (c) After reviewing the information provided by the
23 Secretary of Commerce, the Governor shall also determine
24 whether the company meets the criteria set forth in subsection
25 (a). If the Governor makes such a finding, the company shall
26 be an approved company.

27 § 40-18-374.

1 (a) An incentivized company may claim either or both
2 of the Jobs Act Incentives, to the extent provided in the
3 project agreement.

4 (b) In order for an incentivized company to claim
5 the Jobs Act Incentives, the Governor and the incentivized
6 company shall execute a project agreement. The agreement shall
7 contain all of the following:

8 (1) The name of the incentivized company;

9 (2) The location of the qualifying project;

10 (3) The activity to be conducted at the qualifying
11 project;

12 (4) The Jobs Act Incentives to be granted and the
13 order in which they shall be claimed;

14 (5) The capital investment to be made at the
15 qualifying project;

16 (6) The time period for the capital investment to be
17 made at the qualifying project;

18 (7) The number of eligible employees at the
19 qualifying project;

20 (8) The anticipated wages to be paid to or for the
21 benefit of eligible employees during the incentive period for
22 the jobs created;

23 (9) The dates or conditions that shall begin the
24 running of the incentive periods for applicable Jobs Act
25 Incentives;

26 (10) The lengths of the incentive periods for the
27 Jobs Act Incentives;

1 (11) Any annual or aggregate limitations on the
2 amount of either or both of the Jobs Act Incentives that can
3 be claimed during an incentive period;

4 (12) Provisions governing the recapture of all or
5 part of the Jobs Act Incentives awarded to the qualifying
6 project, should the approved company default on its
7 obligations in the project agreement;

8 (13) Whether the project agreement may be assigned
9 by the approved company to some other purchaser, assignee or
10 successor;

11 (14) Any other terms, conditions and limitations
12 that this act or the Governor may require for an incentivized
13 company to qualify for and receive a Jobs Act Incentive; and

14 (15) Any other terms the parties deem necessary or
15 desirable.

16 (c) The Governor may decrease the amounts and
17 durations of the Jobs Act Incentives to ensure that the
18 anticipated revenues for the state will exceed the amount of
19 tax incentives sought.

20 § 40-18-375.

21 (a) If provided for in the project agreement and in
22 accordance with the terms therein, the incentivized company is
23 allowed a jobs credit against utility taxes, in an annual
24 amount equal to 3 percent of the wages paid to eligible
25 employees during the prior year. The incentive period shall be
26 10 years.

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 paragraph (2), the incentivized company shall submit to

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

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

14 § 40-18-376.

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

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

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

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

27 (4) To offset utility taxes; or

1 (5) To offset some combination of the foregoing, so
2 long as the same credit is used only once.

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

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

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

21 b. Prior to claiming the investment credit as
22 provided in this paragraph (1), the incentivized company shall
23 submit to the Department of Commerce a certification as to its
24 capital investment as of the dates specified in the project
25 agreement. Following such examination as it deems necessary,
26 the Department of Commerce may certify the information and

1 deliver the same to the Department of Revenue. Thereafter, the
2 Department of Revenue shall allow the investment credit.

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

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

23 a. A transfer of the credit shall be made by
24 written, notarized contract.

25 b. No such transfer shall occur before the contract
26 is approved by the Secretary of Commerce. In determining

1 whether to approve any transfer, the Secretary shall make all
2 of the following findings:

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

7 (ii) That the proposed transfer will enhance the
8 economic benefits of the qualifying project;

9 (iii) That the transfer is at a value of at least 85
10 percent of the present value of the credits; and

11 (iv) That the incentivized company and the
12 transferee are both subject to the tax listed in paragraph
13 (a) (1), are both subject to the tax listed in paragraph
14 (a) (2), or are both subject to the tax listed in paragraph
15 (a) (3).

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

23 c. If a transfer is approved, the incentivized
24 company shall submit to the Department of Commerce the
25 following:

26 (i) Certifications as to its capital investment as
27 of the dates specified in the project agreement. Following

1 such examination as it deems necessary, the Department of
2 Commerce may certify the information and deliver the same to
3 the Department of Revenue.

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

10 d. Upon receipt of the certifications from the
11 Department of Commerce as required by subparagraph (b) (3)c.,
12 the Department of Revenue shall thereafter allow the
13 appropriate amount of the investment credit to offset the tax
14 liability of the transferee for any of the taxes listed in
15 subsection (a). A transferee may not make a subsequent
16 transfer of the credit.

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

1 (c) The realization methods in subsection (b) shall
2 not create debts of the state within the meaning of Section
3 213 of the Constitution of the state, as amended.

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

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

19 (3) To the extent the investment credit is used to
20 offset liability for the tax imposed by Section 40-21-82, the
21 Department of Finance shall promulgate regulations to ensure
22 that the credit in no case would reduce the distribution for
23 the Alabama Special Mental Health Trust Fund.

24 § 40-18-377.

25 (a) After its execution, the Department of Commerce
26 shall forward to the Department of Revenue a copy of any

1 project agreement that allows an incentivized company to claim
2 a Jobs Act Incentive.

3 (b) Jobs Act Incentives shall not be considered
4 securities under Section 8-6-2(10).

5 § 40-18-378.

6 (a) The Department of Labor shall periodically
7 verify the actual number of eligible employees employed at the
8 qualifying project and the wages of the eligible employees
9 during the relevant year. If the Department of Labor is not
10 able to provide the verification utilizing all available
11 resources, it may request any additional information from the
12 incentivized company as may be necessary. The Department of
13 Revenue may periodically audit any incentivized company to
14 monitor compliance by the incentivized company with this
15 article. Nothing in this article shall be construed to limit
16 the powers otherwise existing for the Department of Revenue to
17 audit and assess an incentivized company. The Department of
18 Insurance shall have similar audit rights over any
19 incentivized company that is subject to the insurance premium
20 tax.

21 (b) The project agreement shall include provisions
22 for the incentivized company to return any unearned credit
23 amounts.

24 (c) (1) An incentivized company shall be liable for
25 any unearned portion of the jobs credit or investment credit
26 it claims or transfers pursuant to this article. The jobs
27 credit will be considered unearned when the incentivized

1 company fails to pay the full amount of wages or create the
2 full number of jobs upon which the credit was based and
3 claimed. The investment credit will be considered unearned
4 when the incentivized company fails to make the full capital
5 investment upon which the credit was based and claimed or upon
6 which the credit was valued and then transferred. The
7 incentivized company shall be liable for only that portion of
8 the jobs credit or investment credit that was unearned. Any
9 credit claimed by an owner of an incentivized company is
10 deemed to have been claimed by the incentivized company for
11 purposes of this subsection.

12 (2) The Secretary of Commerce may report to the
13 Department of Revenue any failure of an incentivized company
14 to meet the jobs, wage or investment requirements specified in
15 the project agreement. The report will be made by March 31 of
16 the year following the calendar year in which the failure
17 occurs and shall contain sufficient information for the
18 Department of Revenue to calculate the unearned portion of the
19 jobs credit or investment credit. The underpayment of the
20 applicable tax will be deemed to have occurred upon the filing
21 of the report. The report shall be treated as the filing of a
22 return by the incentivized company for purposes of any
23 applicable period of limitation.

24 (3) The Department of Revenue may assess an
25 incentivized company for any unearned portion of the
26 investment credit or jobs credit, with allowed interest and
27 penalties, pursuant to the terms of Chapter 2A or 29. The

1 liability shall be considered an underpayment of the tax
2 against which the respective credit was applied or refunded.

3 (4) If more than one company is considered the
4 incentivized company under the terms of the project agreement,
5 each such company will be jointly and severally liable for any
6 liability associated with the unearned credit.

7 § 40-18-379.

8 (a) There is hereby created a permanent Joint
9 Legislative Advisory Committee on Economic Incentives,
10 hereinafter referred to as the committee.

11 (b) The committee shall be comprised of all of the
12 following persons:

13 (1) The chairs of the House Ways and Means General
14 Fund and Education Fund committees;

15 (2) The chairs of the Senate Finance and Taxation
16 General Fund and Education Fund committees;

17 (3) The Speaker of the House, or his or her
18 designee, and one member of the House of Representatives to be
19 appointed by the Speaker of the House; and

20 (4) The President Pro Tempore of the Senate, or his
21 or her designee, and one member of the Senate to be appointed
22 by the President Pro Tempore of the Senate.

23 (c) The ~~commission~~ committee shall hold an
24 organizational meeting within 30 days after the enactment of
25 this act and shall therein elect a chair and vice chair from
26 among its members. Thereafter, the ~~commission~~ committee shall
27 meet at the call of the chair or any majority of members

1 thereof; provided that the committee shall meet at least two
2 times annually. Other than the organizational meeting, such
3 meetings shall be held with the Secretary of Commerce in
4 attendance, or his or her designee. The committee may meet,
5 act and conduct its business during the sessions of the
6 Legislature or any recess thereof, and in the interim period
7 between sessions.

8 (d) The committee shall adopt its own rules of
9 procedure for the transaction of committee business, and a
10 majority of the members present shall constitute a quorum for
11 the purpose of transacting or performing authorized duties.

12 (e) The committee shall monitor and evaluate the
13 management process and standards used by the Department of
14 Commerce in the development of project agreements and in the
15 awarding of economic development incentives as authorized by
16 the laws of this state. The committee may provide
17 recommendations to the Secretary of Commerce regarding the
18 same and shall act in an advisory role only. Such
19 recommendations may include certain identified minimum
20 standards to be set forth in project agreements and otherwise
21 in the awarding of economic development incentives, as well as
22 recommendations regarding the recruitment of certain
23 industries to the various geographic regions of the state. The
24 committee may also request from the Department of Commerce
25 specific, non-confidential information on successfully
26 negotiated and executed project agreements as well as

1 non-confidential information on unsuccessful project agreement
2 negotiations.

3 (f) The Department of Commerce shall provide to the
4 committee, upon request, an aggregated list of the amounts and
5 types of economic development incentives awarded, as well as
6 an analysis of the cost and benefits of the incentives
7 awarded. The Department of Revenue shall assist the Department
8 of Commerce in the calculations required in this section.

9 (g) The committee shall make an annual report of its
10 findings and recommendations to the Legislature during each
11 regular session, and in its discretion may submit additional
12 reports from time to time, or at any time.

13 (h) In no event shall the Department of Commerce be
14 required to disclose matters which would cause it to violate
15 any nondisclosure agreement executed for a project. In no
16 event shall the Department of Commerce be required to disclose
17 matters which would cause the state of Alabama to be at a
18 competitive disadvantage in ongoing or future project
19 negotiations. The Department of Commerce shall not be required
20 under this act to disclose confidential information to the
21 committee that involves ongoing project negotiations.

22 (i) Meetings of the committee are exempt from
23 Chapter 25A of Title 36, provided that the minutes of each
24 meeting shall be made available for public inspection. In
25 order to balance the privacy needs of economic development
26 negotiations with openness to the public, the committee may

1 use code names in its deliberations about various applicants
2 and in the minutes of its proceedings.

3 (j) The membership of the committee shall be
4 inclusive and shall reflect the racial, gender, geographic,
5 urban/rural, and economic diversity of the state.

6 § 40-18-380.

7 (a) The Departments of Commerce, Labor, Insurance,
8 Revenue and Finance shall implement this article, exercise all
9 powers as authorized in this article, and promulgate
10 regulations to implement and administer the provisions of this
11 act.

12 b) All filings made by a private party with any
13 department of the state government shall be made using forms
14 promulgated by such department. Any such filing shall be
15 treated as a tax return, subject to penalties imposed by the
16 Department of Revenue.

17 § 40-18-381.

18 (a) Nothing in this article shall be construed to
19 constitute a guarantee or assumption by the state of any debt
20 of any company nor to authorize the credit of the state to be
21 given, pledged or loaned to any company.

22 (b) The provisions of this article shall not be
23 construed in a manner adverse to the validity of any Jobs Act
24 Incentives.

25 (c) Nothing in this article shall be construed to
26 make available to any company any right to the Jobs Act
27 Incentives absent strict compliance with this article. No

1 cause of action shall exist for the denial of any benefit
2 under this article.

3 Section 4. Sections 40-21-87 and 40-21-107, Code of
4 Alabama 1975, are amended to read as follows:

5 "§40-21-87.

6 All taxes or other funds received or collected by
7 the Department of Revenue of the State of Alabama under the
8 provisions of this article remaining after the application of
9 any exemptions, exclusions, deductions, or credits applicable
10 thereto, and after the payment of the expenses of
11 administration and enforcement of this article shall be
12 without delay deposited into the State Treasury to the credit
13 of Education Trust Fund except that, beginning the fiscal year
14 ending September 30, 1993, \$14,600,000 annually shall be
15 deposited to the Special Mental Health Trust Fund, of which
16 one-fourth is to be deposited quarterly.

17 "§40-21-107.

18 All taxes or other funds received or collected by
19 the Department of Revenue of the State of Alabama under the
20 provisions of this article remaining after the application of
21 any exemptions, exclusions, deductions, or credits applicable
22 thereto, and after the payment of the expenses of
23 administration and enforcement of this article shall be
24 without delay deposited into the State Treasury to the credit
25 of Alabama Education Trust Fund.

26 Section 5. The incentives authorized by this act
27 shall not be available for qualifying projects for which

1 project agreements have not been executed on or prior to
2 December 31, 2019, unless the Legislature, by joint resolution
3 or other applicable action of both houses, votes to continue
4 or reinstate the incentives for new projects after that date.
5 No action or inaction on the part of the Legislature shall
6 reduce or suspend any incentive awarded pursuant to this act
7 in any past or future calendar year with respect to qualifying
8 projects for which project agreements have been executed on or
9 prior to December 31, 2019, it being the sole intention of
10 this section that failure of the Legislature to adopt a joint
11 resolution or other applicable action of both houses
12 continuing the incentives authorized by this act for periods
13 after December 31, 2019, shall affect only the availability of
14 the incentives to qualifying projects for which project
15 agreements have not been executed on or prior to December 31,
16 2019, and shall not affect qualifying projects for which
17 project agreements have been executed on or prior to December
18 31, 2019.

19 Section 6. Articles 7, 7A and 9 of Chapter 18 of
20 Title 40, Code of Alabama 1975, are repealed; provided,
21 however, that those provisions shall remain in full force and
22 effect for any qualifying project which, within six months of
23 the effective date of this act, has evidenced its intent to
24 claim such incentives by the filing of a Form INT-1, the
25 execution of a project agreement pursuant to this act, or the
26 execution of a memorandum of understanding with the Department
27 of Commerce. In no case shall a project receive both the Jobs

1 Act Incentives and the incentives under Articles 7, 7A or 9 of
2 Chapter 18 of Title 40, Code of Alabama 1975. The Jobs Act
3 Incentives shall not be available to any project for which
4 substantial construction activities have begun by the
5 effective date of this act.

6 Section 7. If a court of competent jurisdiction
7 adjudges invalid or unconstitutional any clause, sentence,
8 paragraph, section or part of this act, the judgment or decree
9 shall not affect, impair, invalidate or nullify the remainder
10 of this act, but the effect of the decision shall be confined
11 to the clause, sentence, paragraph, section or part of this
12 act adjudged to be invalid or unconstitutional. No action or
13 inaction on the part of a court shall reduce or suspend any
14 Jobs Act Incentive in any past or future calendar year with
15 respect to any incentivized company with an executed project
16 agreement, the effect being that a finding of invalidity or
17 unconstitutionality shall affect only the availability of the
18 Jobs Act Incentives to projects for which a project agreement
19 is not yet in effect. In the event any part of this act is
20 adjudged to be invalid or unconstitutional and,
21 notwithstanding the preceding sentence, that adjudication has
22 the effect of reducing or suspending any Jobs Act Incentive,
23 the Legislature shall make applicable appropriations from
24 available funds.

25 Section 8. All laws or parts of laws which conflict
26 with this act are repealed.

1 Section 9. This act shall become effective ninety
2 days following its passage and approval by the Governor, or
3 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 Economic Devel-
opment and Tourism..... 03-MAR-15

Read for the second time and placed
on the calendar 2 amendments 05-MAR-15

Read for the third time and passed
as amended..... 10-MAR-15

Yeas 101, Nays 0, Abstains 1

Jeff Woodard
Clerk