

1 HB58  
2 167044-2  
3 By Representative Baker  
4 RFD: Economic Development and Tourism  
5 First Read: 03-MAR-15  
6 PFD: 02/27/2015

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

ENROLLED, An Act,

To enact the Alabama Jobs Act; to authorize and provide for a jobs credit incentive and an investment credit incentive to certain businesses for approved projects that create new jobs in Alabama; to provide that the incentives would only be available following the execution of a project agreement and a determination that the economic benefits of the project would exceed the cost of the incentives to the state; to allow the jobs credit for 10 years in an amount of 3 percent of the previous year's annual wages for eligible employees; to apply the jobs credit against the utility gross receipts and utility service use taxes; to provide that the jobs credit could be refundable during the incentive period; to provide that the jobs credit may be claimed as a credit against utility taxes paid with a carryforward for earned but unused amounts; to allow the investment credit in an amount of 1.5 percent of a qualified capital investment annually, for a period of 10 years; to apply the investment credit against the income tax, estimated income taxes, the financial institution excise tax, or the insurance premium tax, with additional offsets of utility gross receipts and utility service use taxes; to provide that the investment credit may be claimed as a credit against taxes paid with a carryforward for earned but unused amounts; to permit special allocations of investment

1 credits; to make transferable the first three years of the  
2 investment credit, in certain limited circumstances; to  
3 provide for the distribution of the financial institution  
4 excise, insurance premium, and utility taxes when a company  
5 claims the jobs credit, the investment credit, or both; to  
6 make the Jobs Act Incentives available only for projects that  
7 fall within certain designated activities, that involve  
8 certain minimum new job levels, and that meet certain other  
9 standards; to require the Secretary of Commerce and Governor  
10 to make certain findings before approving a company to receive  
11 incentives; to require a project agreement; to allow the  
12 Governor to decrease the amounts and durations of the Jobs Act  
13 Incentives to ensure that the net economic benefits of the  
14 qualifying project would be positive; to provide for proof  
15 that incentives are due to be granted; to provide for the  
16 promulgation of forms for information to be submitted to a  
17 department of state government, and that such submissions  
18 shall be treated as tax returns; to provide for audits of  
19 companies claiming the Jobs Act Incentives; to require the  
20 clawback of incentives in certain cases; to create a permanent  
21 Joint Legislative Advisory Committee on Economic Incentives;  
22 to provide for the powers of such committee; to provide for  
23 the sunset of the act; to make legislative findings; to  
24 provide for the promulgation of regulations; to provide that  
25 the incentives shall not be considered securities; to provide

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

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 Section 2. The legislature makes the following  
20 findings:

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

24 (b) It is in the best interests of the state to  
25 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~~ any education  
 23 personnel.

24 (i) The powers to be granted and the purposes to be  
 25 accomplished by this act will create an environment for the

1 recruitment of quality projects and the expansion of existing  
2 businesses within Alabama.

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

6 Section 3. A new Article 16 of Chapter 18 of Title  
7 40, Code of Alabama 1975, is created to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22           (14) QUALIFYING PROJECT. Any project to be  
23 undertaken by an approved company that satisfies Section  
24 40-18-372.

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

4           (16) UTILITY TAXES. The taxes imposed by Sections  
5 40-21-82 and 40-21-102.

6           (17) WAGES. Total wages of an employee (including  
7 gross wages, salaries, overtime and bonuses), defined by  
8 reference to Section 25-4-16(b), without application of  
9 Sections 25-4-16(b) (1), 25-4-16(b) (2) a., 25-4-16(b) (3) and  
10 25-4-16(b) (4).

11           § 40-18-371. For a company to receive one or both of  
12 the Jobs Act Incentives provided in this article, all of the  
13 following shall occur:

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

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

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

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

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

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

5 § 40-18-372. A qualifying project must be found by  
6 the Secretary of Commerce to conduct an activity specified in  
7 subsection (a) and to meet the minimum standard set forth in  
8 subsection (b).

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

11 (1) Described by NAICS Code 1133, 115111, 2121,  
12 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482,  
13 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493,  
14 511, 5121 (other than 51213), 51221, 517, 518 (without regard  
15 to the premise that data processing and related services be  
16 performed in conjunction with a third party), 51913, 52232,  
17 54133 (if predominantly in furtherance of another activity  
18 described in this article), 54134 (if predominantly in  
19 furtherance of another activity described in this article),  
20 54138, 5415, 541614, 5417, 55 (if not for the production of  
21 electricity), 561422 (other than establishments that originate  
22 telephone calls), 562213, 56291, 56292, 611512, 927 or 92811.

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

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

5           (4) The national or regional headquarters for a  
6 company that conducts significant business operations outside  
7 the state and that will serve as the principal office of the  
8 company's principal operating officer with chief  
9 responsibility for the daily business operations of the  
10 company.

11           (5) A commercial enterprise which is open to the  
12 public not less than 120 days during a calendar year and is  
13 designed to attract visitors from inside or outside of the  
14 State of Alabama, typically for its inherent cultural value,  
15 historical significance, natural or man-made beauty, or  
16 entertainment or amusement opportunities, including, but not  
17 limited to, a cultural or historical site, a botanical garden,  
18 a museum, a wildlife park or aquarium open to the public that  
19 cares for and displays a collection of animals or fish, an  
20 amusement park, a convention hotel and conference center, a  
21 water park, or a spectator venue or arena.

22           ~~(5)~~ (6) A target of the state's economic development  
23 efforts pursuant to the Accelerate Alabama Strategic Economic  
24 Development Plan adopted in January 2012 by the Alabama  
25 Economic Development Alliance, created by Executive Order

1 Number 21 of the Governor on July 18, 2011, or any amended  
2 version or successor document thereto.

3 ~~(6)~~ (7) A type listed in a regulation adopted by the  
4 Department of Commerce, other than a regulation submitted as  
5 an emergency rule.

6 Notwithstanding the foregoing, a qualifying project  
7 may not engage predominantly in farming activities involving  
8 trees, animals or crops, and a qualifying project may not  
9 engage predominantly in the retail sale of tangible personal  
10 property or ~~services.~~ services, and may not be a shopping  
11 center, restaurant, movie theater, bowling alley, fitness  
12 center, miniature golf course, nightclub, gaming facility, or  
13 establishment serving the local community. However, if such  
14 ~~retail sales~~ excluded activities are not the predominant  
15 activity at the project, and if the project is otherwise a  
16 qualifying project, then the project agreement may provide  
17 that the capital investment may include costs related to  
18 ~~retail sales~~ excluded activities that are ancillary to the  
19 primary business conducted as part of the project. This  
20 provision shall not be deemed to exclude customer service  
21 centers, call centers or headquarters otherwise allowed by  
22 this subsection (a).

23 (b) A qualifying project shall create a significant  
24 number of new jobs for the area in which the qualifying  
25 project shall be located. Absent a finding of extraordinary

1 circumstances by the Secretary of Commerce, a qualifying  
2 project shall employ either of the following number of new  
3 employees:

4 (1) Any number of new employees, for a qualifying  
5 project in which the predominant activity involves chemical  
6 manufacturing, data centers, engineering, design, or research,  
7 metal/machining technology or toolmaking; or

8 (2) At least 50 new employees, for all other  
9 qualifying projects.

10 § 40-18-373. In order for a company to be an  
11 approved company, all of the following shall occur:

12 (a) For any company that proposes a qualifying  
13 project, the Secretary of Commerce shall make all of the  
14 following findings:

15 (1) That the project is in fact a qualifying  
16 project;

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

19 (3) That the amount of tax incentives sought are  
20 exceeded by anticipated revenues for the state, including  
21 income, property, business privilege, utility, gross receipts,  
22 sales, and use tax revenues that are generated by the economic  
23 activity resulting from the project, as they arise from the  
24 following aspects of the qualifying project:

1           a. Construction activities related to the qualifying  
2 project;

3           b. The purchase of building materials and the  
4 initial equipping of the qualifying project;

5           c. The subsequent equipping of the qualifying  
6 project; and

7           d. The operation of the qualifying project.

8           (b) Upon making affirmative findings on the criteria  
9 set forth in subsection (a) that are applicable, the Secretary  
10 of Commerce shall recommend to the Governor that the company  
11 be designated as an approved company. The name of the company  
12 and information collected about it shall be forwarded to the  
13 Governor.

14           (c) After reviewing the information provided by the  
15 Secretary of Commerce, the Governor shall also determine  
16 whether the company meets the criteria set forth in subsection  
17 (a). If the Governor makes such a finding, the company shall  
18 be an approved company.

19           § 40-18-374.

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

23           (b) In order for an incentivized company to claim  
24 the Jobs Act Incentives, the Governor and the incentivized

1 company shall execute a project agreement. The agreement shall  
2 contain all of the following:

3 (1) The name of the incentivized company;

4 (2) The location of the qualifying project;

5 (3) The activity to be conducted at the qualifying  
6 project;

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

9 (5) The capital investment to be made at the  
10 qualifying project;

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

13 (7) The number of eligible employees at the  
14 qualifying project;

15 (8) The anticipated wages to be paid to or for the  
16 benefit of eligible employees during the incentive period for  
17 the jobs created;

18 (9) The dates or conditions that shall begin the  
19 running of the incentive periods for applicable Jobs Act  
20 Incentives;

21 (10) The lengths of the incentive periods for the  
22 Jobs Act Incentives;

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

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

5           (13) Whether the project agreement may be assigned  
6 by the approved company to some other purchaser, assignee or  
7 successor;

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

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

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

17           § 40-18-375.

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

1           b. Prior to claiming the jobs credit as provided in  
2 this paragraph (2), the incentivized company shall submit to  
3 the Department of Commerce a certification as to the wages  
4 paid to eligible employees during the prior year. Following  
5 such examination as it deems necessary, the Department of  
6 Commerce may certify the information and deliver same to the  
7 Department of Revenue. Thereafter, the Department of Revenue  
8 allow the jobs credit.

9           (c) The realization methods in subsection (b) shall  
10 not create debts of the state within the meaning of Section  
11 213 of the Constitution of the state, as amended.

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

16           § 40-18-376.

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

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

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

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

4           (4) To offset utility taxes; or

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

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

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

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

1           b. Prior to claiming the investment credit as  
2 provided in this paragraph (1), the incentivized company shall  
3 submit to the Department of Commerce a certification as to its  
4 capital investment as of the dates specified in the project  
5 agreement. Following such examination as it deems necessary,  
6 the Department of Commerce may certify the information and  
7 deliver the same to the Department of Revenue. Thereafter, the  
8 Department of Revenue shall allow the investment credit.

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

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

4           a. A transfer of the credit shall be made by  
5 written, notarized contract.

6           b. No such transfer shall occur before the contract  
7 is approved by the Secretary of Commerce. In determining  
8 whether to approve any transfer, the Secretary shall make all  
9 of the following findings:

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

14           (ii) That the proposed transfer will enhance the  
15 economic benefits of the qualifying project;

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

18           (iv) That the incentivized company and the  
19 transferee are both subject to the tax listed in paragraph  
20 (a) (1), are both subject to the tax listed in paragraph  
21 (a) (2), or are both subject to the tax listed in paragraph  
22 (a) (3).

23           Upon making affirmative findings on the criteria set  
24 forth above, the Secretary of Commerce shall recommend to the  
25 Governor that the transfer should be approved. Information

1 about the proposed transfer shall be forwarded to the  
2 Governor, and the Governor may include provisions about the  
3 transfer in the project agreement, or in an amendment thereto  
4 executed by the Governor and the incentivized company.

5 c. If a transfer is approved, the incentivized  
6 company shall submit to the Department of Commerce the  
7 following:

8 (i) Certifications as to its capital investment as  
9 of the dates specified in the project agreement. Following  
10 such examination as it deems necessary, the Department of  
11 Commerce may certify the information and deliver the same to  
12 the Department of Revenue.

13 (ii) Certified information about the transfers,  
14 including identifying information about the transferees and  
15 the amount of credit each transferee should claim. Following  
16 such examination as it deems necessary, the Department of  
17 Commerce may certify the information and deliver the same to  
18 the Department of Revenue.

19 d. Upon receipt of the certifications from the  
20 Department of Commerce as required by subparagraph (b) (3)c.,  
21 the Department of Revenue shall thereafter allow the  
22 appropriate amount of the investment credit to offset the tax  
23 liability of the transferee for any of the taxes listed in  
24 subsection (a). A transferee may not make a subsequent  
25 transfer of the credit.

1           e. If a credit is transferred, an incentivized  
2 company that is later determined by the Secretary of Commerce  
3 to have defaulted under the project agreement shall be liable  
4 for the underpayment of tax attributable to the credit and for  
5 penalties and interest thereon. Unless the purchase of the  
6 credits is determined to have been made in a fraudulent  
7 manner, or is a transfer in anticipation of bankruptcy,  
8 insolvency or closure, a transferee shall not be liable for  
9 the unpaid tax attributable to the credit, or for penalties or  
10 interest thereon.

11           (c) The realization methods in subsection (b) shall  
12 not create debts of the state within the meaning of Section  
13 213 of the Constitution of the state, as amended.

14           (d) (1) To the extent the investment credit is used  
15 to offset a financial institution excise tax liability, in  
16 making the report required by Section 40-16-6(d), the  
17 financial institution receiving the investment credit shall  
18 not take into account the qualifying project, and the  
19 Department of Finance shall promulgate regulations to ensure  
20 that the credit in no case would reduce the distribution for  
21 municipalities and counties.

22           (2) To the extent the investment credit is used to  
23 offset an insurance premium tax liability, the Department of  
24 Finance shall promulgate regulations to ensure that the credit  
25 would reduce the distribution for the Education Trust Fund,

1 but in no case would the investment credit reduce the  
2 distributions for the State General Fund or the Alabama  
3 Special Mental Health Trust Fund.

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

9 § 40-18-377.

10 (a) After its execution, the Department of Commerce  
11 shall forward to the Department of Revenue a copy of any  
12 project agreement that allows an incentivized company to claim  
13 a Jobs Act Incentive.

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

16 § 40-18-378.

17 (a) The Department of Labor shall periodically  
18 verify the actual number of eligible employees employed at the  
19 qualifying project and the wages of the eligible employees  
20 during the relevant year. If the Department of Labor is not  
21 able to provide the verification utilizing all available  
22 resources, it may request any additional information from the  
23 incentivized company as may be necessary. The Department of  
24 Revenue may periodically audit any incentivized company to  
25 monitor compliance by the incentivized company with this

1 article. Nothing in this article shall be construed to limit  
2 the powers otherwise existing for the Department of Revenue to  
3 audit and assess an incentivized company. The Department of  
4 Insurance shall have similar audit rights over any  
5 incentivized company that is subject to the insurance premium  
6 tax.

7 (b) The project agreement shall include provisions  
8 for the incentivized company to return any unearned credit  
9 amounts.

10 (c) (1) An incentivized company shall be liable for  
11 any unearned portion of the jobs credit or investment credit  
12 it claims or transfers pursuant to this article. The jobs  
13 credit will be considered unearned when the incentivized  
14 company fails to pay the full amount of wages or create the  
15 full number of jobs upon which the credit was based and  
16 claimed. The investment credit will be considered unearned  
17 when the incentivized company fails to make the full capital  
18 investment upon which the credit was based and claimed or upon  
19 which the credit was valued and then transferred. The  
20 incentivized company shall be liable for only that portion of  
21 the jobs credit or investment credit that was unearned. Any  
22 credit claimed by an owner of an incentivized company is  
23 deemed to have been claimed by the incentivized company for  
24 purposes of this subsection.

1           (2) The Secretary of Commerce may report to the  
2 Department of Revenue any failure of an incentivized company  
3 to meet the jobs, wage or investment requirements specified in  
4 the project agreement. The report will be made by March 31 of  
5 the year following the calendar year in which the failure  
6 occurs and shall contain sufficient information for the  
7 Department of Revenue to calculate the unearned portion of the  
8 jobs credit or investment credit. The underpayment of the  
9 applicable tax will be deemed to have occurred upon the filing  
10 of the report. The report shall be treated as the filing of a  
11 return by the incentivized company for purposes of any  
12 applicable period of limitation.

13           (3) The Department of Revenue may assess an  
14 incentivized company for any unearned portion of the  
15 investment credit or jobs credit, with allowed interest and  
16 penalties, pursuant to the terms of Chapter 2A or 29. The  
17 liability shall be considered an underpayment of the tax  
18 against which the respective credit was applied or refunded.

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

23           § 40-18-379.

1 (a) There is hereby created a permanent Joint  
 2 Legislative Advisory Committee on Economic Incentives,  
 3 hereinafter referred to as the committee.

4 (b) The committee shall be comprised of all of the  
 5 following persons:

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

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

10 (3) The Speaker of the House, or his or her  
 11 designee, and ~~one member~~ two members of the House of  
 12 Representatives to be appointed by the Speaker of the House;  
 13 and

14 (4) The President Pro Tempore of the Senate, or his  
 15 or her designee, the chair of the senate committee on Fiscal  
 16 Responsibility and Economic Development or its successor  
 17 committee, if any, and ~~one member of the Senate to be~~  
 18 ~~appointed by the President Pro Tempore of the Senate.~~

19 (5) One member of the Senate to be appointed by the  
 20 President Pro Tempore of the Senate.

21 (c) The ~~commission~~ committee shall hold an  
 22 organizational meeting within 30 days after the enactment of  
 23 this act and shall therein elect a chair and vice chair from  
 24 among its members. Thereafter, the ~~commission~~ committee shall  
 25 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

1 negotiated and executed project agreements as well as  
2 non-confidential information on unsuccessful project agreement  
3 negotiations.

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

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

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

23 (i) Meetings of the committee are exempt from  
24 Chapter 25A of Title 36, provided that the minutes of each  
25 meeting shall be made available for public inspection. In

1 order to balance the privacy needs of economic development  
2 negotiations with openness to the public, the committee may  
3 use code names in its deliberations about various applicants  
4 and in the minutes of its proceedings.

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

8 § 40-18-380.

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

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

19 § 40-18-381.

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

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

4 (c) Nothing in this article shall be construed to  
 5 make available to any company any right to the Jobs Act  
 6 Incentives absent strict compliance with this article. ~~No~~  
 7 ~~cause of action shall exist for the denial of any benefit~~  
 8 ~~under this article.~~

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

11 "§40-21-87.

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

23 "§40-21-107.

24 All taxes or other funds received or collected by  
 25 the Department of Revenue of the State of Alabama under the

1 provisions of this article remaining after the application of  
2 any exemptions, exclusions, deductions, or credits applicable  
3 thereto, and after the payment of the expenses of  
4 administration and enforcement of this article shall be  
5 without delay deposited into the State Treasury to the credit  
6 of Alabama Education Trust Fund.

7 Section 5. The incentives authorized by this act  
8 shall not be available for qualifying projects for which  
9 project agreements have not been executed on or prior to  
10 December 31, 2019, unless the Legislature, by joint resolution  
11 or other applicable action of both houses, votes to continue  
12 or reinstate the incentives for new projects after that date.  
13 No action or inaction on the part of the Legislature shall  
14 reduce or suspend any incentive awarded pursuant to this act  
15 in any past or future calendar year with respect to qualifying  
16 projects for which project agreements have been executed on or  
17 prior to December 31, 2019, it being the sole intention of  
18 this section that failure of the Legislature to adopt a joint  
19 resolution or other applicable action of both houses  
20 continuing the incentives authorized by this act for periods  
21 after December 31, 2019, shall affect only the availability of  
22 the incentives to qualifying projects for which project  
23 agreements have not been executed on or prior to December 31,  
24 2019, and shall not affect qualifying projects for which

1 project agreements have been executed on or prior to December  
2 31, 2019.

3 Section 6. At no time shall the aggregate balance of  
4 outstanding Jobs Act Incentives exceed \$850 million, unless  
5 the Legislature, by joint resolution or other applicable  
6 action of both houses, votes to allow additional Jobs Act  
7 Incentives.

8 Section 7. Articles 7, 7A and 9 of Chapter 18 of  
9 Title 40, Code of Alabama 1975, are repealed; provided,  
10 however, that those provisions shall remain in full force and  
11 effect for any qualifying project which, within six months of  
12 the effective date of this act, has evidenced its intent to  
13 claim such incentives by the filing of a Form INT-1, the  
14 execution of a project agreement pursuant to this act, or the  
15 execution of a memorandum of understanding with the Department  
16 of Commerce. In no case shall a project receive both the Jobs  
17 Act Incentives and the incentives under Articles 7, 7A or 9 of  
18 Chapter 18 of Title 40, Code of Alabama 1975. The Jobs Act  
19 Incentives shall not be available to any project for which  
20 substantial construction activities have begun by the  
21 effective date of this act.

22 Section 8. If a court of competent jurisdiction  
23 adjudges invalid or unconstitutional any clause, sentence,  
24 paragraph, section or part of this act, the judgment or decree  
25 shall not affect, impair, invalidate or nullify the remainder

1 of this act, but the effect of the decision shall be confined  
2 to the clause, sentence, paragraph, section or part of this  
3 act adjudged to be invalid or unconstitutional. No action or  
4 inaction on the part of a court shall reduce or suspend any  
5 Jobs Act Incentive in any past or future calendar year with  
6 respect to any incentivized company with an executed project  
7 agreement, the effect being that a finding of invalidity or  
8 unconstitutionality shall affect only the availability of the  
9 Jobs Act Incentives to projects for which a project agreement  
10 is not yet in effect. In the event any part of this act is  
11 adjudged to be invalid or unconstitutional and,  
12 notwithstanding the preceding sentence, that adjudication has  
13 the effect of reducing or suspending any Jobs Act Incentive,  
14 the Legislature shall make applicable appropriations from  
15 available funds.

16 Section 9. All laws or parts of laws which conflict  
17 with this act are repealed.

18 Section 10. This act shall become effective ninety  
19 days following its passage and approval by the Governor, or  
20 its otherwise becoming law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

---

Speaker of the House of Representatives

---

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 10-MAR-15, as amended.

Jeff Woodard  
Clerk

Senate	<hr/> 31-MAR-15 <hr/>	Amended and Passed
House	02-APR-15 <hr/>	Passed, as amended by Conference Com- mittee Report
Senate	<hr/> 02-APR-15 <hr/>	Passed, as amended by Conference Com- mittee Report