

1 HB58
2 164950-2
3 By Representative Baker
4 RFD: Economic Development and Tourism
5 First Read: 03-MAR-15
6 PFD: 02/27/2015

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8 SYNOPSIS: This bill would enact the Alabama Jobs Act,
9 to authorize and provide for incentives to certain
10 businesses that create new jobs in Alabama. The
11 incentives would require a project agreement with
12 the state and would only be available upon a
13 determination that the economic benefits of the
14 incentives would be more than the cost of the
15 incentives.

16 The incentives created by this act would
17 include a jobs credit for qualifying business
18 projects that create new jobs in an amount of 3
19 percent of the company's previous year's wages paid
20 to the new employees, and an investment credit of
21 1.5 percent of an eligible capital investment for a
22 period of 10 years.

23 The bill would repeal various incentives
24 currently offered to companies, including the
25 capital credit. The bill would require clawbacks.
26 The bill would only allow the incentives to be
27 offered to companies meeting certain criteria. The

1 bill would also establish an advisory committee on
2 economic incentives.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To enact the Alabama Jobs Act; to authorize and
9 provide for a jobs credit incentive and an investment credit
10 incentive to certain businesses for approved projects that
11 create new jobs in Alabama; to provide that the incentives
12 would only be available following the execution of a project
13 agreement and a determination that the economic benefits of
14 the project would exceed the cost of the incentives to the
15 state; to allow the jobs credit for 10 years in an amount of 3
16 percent of the previous year's annual wages for eligible
17 employees; to apply the jobs credit against the utility gross
18 receipts and utility service use taxes; to provide that the
19 jobs credit could be refundable during the incentive period;
20 to provide that the jobs credit may be claimed as a credit
21 against utility taxes paid with a carryforward for earned but
22 unused amounts; to allow the investment credit in an amount of
23 1.5 percent of a qualified capital investment annually, for a
24 period of 10 years; to apply the investment credit against the
25 income tax, estimated income taxes, the financial institution
26 excise tax, or the insurance premium tax, with additional
27 offsets of utility gross receipts and utility service use

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, 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 target of the state's economic development
26 efforts pursuant to the Accelerate Alabama Strategic Economic
27 Development Plan adopted in January 2012 by the Alabama

1 Economic Development Alliance, created by Executive Order
2 Number 21 of the Governor on July 18, 2011, or any amended
3 version or successor document thereto.

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

7 Notwithstanding the foregoing, a qualifying project
8 may not engage predominantly in farming activities involving
9 trees, animals or crops, and a qualifying project may not
10 engage predominantly in the retail sale of tangible personal
11 property or services. However, if such retail sales are not
12 the predominant activity at the project, and if the project is
13 otherwise a qualifying project, then the project agreement may
14 provide that the capital investment may include costs related
15 to retail sales activities that are ancillary to the primary
16 business conducted as part of the project. This provision
17 shall not be deemed to exclude customer service centers, call
18 centers or headquarters otherwise allowed by this subsection
19 (a).

20 (b) A qualifying project shall create a significant
21 number of new jobs for the area in which the qualifying
22 project shall be located. Absent a finding of extraordinary
23 circumstances by the Secretary of Commerce, a qualifying
24 project shall employ either of the following number of new
25 employees:

26 (1) Any number of new employees, for a qualifying
27 project in which the predominant activity involves chemical

1 manufacturing, data centers, engineering, design, or research;
2 or

3 (2) At least 50 new employees, for all other
4 qualifying projects.

5 § 40-18-373. In order for a company to be an
6 approved company, all of the following shall occur:

7 (a) For any company that proposes a qualifying
8 project, the Secretary of Commerce shall make all of the
9 following findings:

10 (1) That the project is in fact a qualifying
11 project;

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

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

20 a. Construction activities related to the qualifying
21 project;

22 b. The purchase of building materials and the
23 initial equipping of the qualifying project;

24 c. The subsequent equipping of the qualifying
25 project; and

26 d. The operation of the qualifying project.

1 (b) Upon making affirmative findings on the criteria
2 set forth in subsection (a) that are applicable, the Secretary
3 of Commerce shall recommend to the Governor that the company
4 be designated as an approved company. The name of the company
5 and information collected about it shall be forwarded to the
6 Governor.

7 (c) After reviewing the information provided by the
8 Secretary of Commerce, the Governor shall also determine
9 whether the company meets the criteria set forth in subsection
10 (a). If the Governor makes such a finding, the company shall
11 be an approved company.

12 § 40-18-374.

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

16 (b) In order for an incentivized company to claim
17 the Jobs Act Incentives, the Governor and the incentivized
18 company shall execute a project agreement. The agreement shall
19 contain all of the following:

20 (1) The name of the incentivized company;

21 (2) The location of the qualifying project;

22 (3) The activity to be conducted at the qualifying
23 project;

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

26 (5) The capital investment to be made at the
27 qualifying project;

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

3 (7) The number of eligible employees at the
4 qualifying project;

5 (8) The anticipated wages to be paid to or for the
6 benefit of eligible employees during the incentive period for
7 the jobs created;

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

11 (10) The lengths of the incentive periods for the
12 Jobs Act Incentives;

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

16 (12) Provisions governing the recapture of all or
17 part of the Jobs Act Incentives awarded to the qualifying
18 project, should the approved company default on its
19 obligations in the project agreement;

20 (13) Whether the project agreement may be assigned
21 by the approved company to some other purchaser, assignee or
22 successor;

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

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

1 (c) The Governor may decrease the amounts and
2 durations of the Jobs Act Incentives to ensure that the
3 anticipated revenues for the state will exceed the amount of
4 tax incentives sought.

5 § 40-18-375.

6 (a) If provided for in the project agreement and in
7 accordance with the terms therein, the incentivized company is
8 allowed a jobs credit against utility taxes, in an annual
9 amount equal to 3 percent of the wages paid to eligible
10 employees during the prior year. The incentive period shall be
11 10 years.

12 (b) The project agreement shall provide that one of
13 the following methods shall be used to realize the benefits of
14 the jobs credit:

15 (1)a. The jobs credit may be paid to the
16 incentivized company as a refund out of utility taxes during
17 the incentive period, regardless of the amount of utility
18 taxes actually paid by the incentivized company.

19 b. For each year of the incentive period for the
20 jobs credit, the incentivized company shall submit to the
21 Department of Commerce a certification as to the wages paid to
22 eligible employees during the prior year. Following such
23 examination as it deems necessary, the Department of Commerce
24 may certify the information and deliver the same to the
25 Department of Revenue. Thereafter, the Department of Revenue
26 shall calculate the correct refund and issue it directly to
27 the incentivized company.

1 (2)a. The jobs credit may be claimed as a credit
2 against utility taxes actually paid. In any one year, if the
3 credit exceeds the amount of taxes that are allowed to be
4 offset by the project agreement and that are owed by the
5 incentivized company, the incentivized company may carry the
6 credit forward, to the extent allowed in the project
7 agreement. No carryforward shall be allowed for more than five
8 years. Rules similar to those used for Section 40-18-15.2
9 shall be applied.

10 b. Prior to claiming the jobs credit as provided in
11 this paragraph (2), the incentivized company shall submit to
12 the Department of Commerce a certification as to the wages
13 paid to eligible employees during the prior year. Following
14 such examination as it deems necessary, the Department of
15 Commerce may certify the information and deliver same to the
16 Department of Revenue. Thereafter, the Department of Revenue
17 allow the jobs credit.

18 (c) The realization methods in subsection (b) shall
19 not create debts of the state within the meaning of Section
20 213 of the Constitution of the state, as amended.

21 (d) The Department of Finance shall promulgate
22 regulations to ensure that the credit in no case would reduce
23 the distribution for the Alabama Special Mental Health Trust
24 Fund.

25 § 40-18-376.

26 (a) If provided for in the project agreement, the
27 incentivized company is allowed an investment credit in an

1 annual amount equal to 1.5 percent of the capital investment
2 incurred as of the beginning of the incentive period, to be
3 used as follows:

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

6 (2) To offset the financial institution excise tax
7 found in Chapter 16;

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

11 (4) To offset utility taxes; or

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

14 The incentive period shall begin no earlier than the
15 placed-in-service date. The incentive period shall be 10
16 years. Should only some portion of a tax year be included in
17 the incentive period, the amount of the investment credit
18 shall be prorated on a daily basis.

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

23 (1)a. The investment credit may be claimed as a
24 credit against the taxes in subsection (a) that are actually
25 paid. In any one year, if the credit exceeds the amount of
26 taxes that are allowed to be offset by the project agreement
27 and that are owed by the incentivized company, the

1 incentivized company may carry the credit forward, to the
2 extent allowed in the project agreement. No carryforward shall
3 be allowed for more than five years. Rules similar to those
4 used for Section 40-18-15.2 shall be applied.

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

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

1 employee/owners of a flow-through entity owned by an employee
2 stock ownership plan trust.

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

6 a. A transfer of the credit shall be made by
7 written, notarized contract.

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

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

16 (ii) That the proposed transfer will enhance the
17 economic benefits of the qualifying project;

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

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

25 Upon making affirmative findings on the criteria set
26 forth above, the Secretary of Commerce shall recommend to the
27 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.

26 e. If a credit is transferred, an incentivized
27 company that is later determined by the Secretary of Commerce

1 to have defaulted under the project agreement shall be liable
2 for the underpayment of tax attributable to the credit and for
3 penalties and interest thereon. Unless the purchase of the
4 credits is determined to have been made in a fraudulent
5 manner, or is a transfer in anticipation of bankruptcy,
6 insolvency or closure, a transferee shall not be liable for
7 the unpaid tax attributable to the credit, or for penalties or
8 interest thereon.

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

20 (2) To the extent the investment credit is used to
21 offset an insurance premium tax liability, the Department of
22 Finance shall promulgate regulations to ensure that the credit
23 would reduce the distribution for the Education Trust Fund,
24 but in no case would the investment credit reduce the
25 distributions for the State General Fund or the Alabama
26 Special Mental Health Trust Fund.

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

6 § 40-18-377.

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

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

13 § 40-18-378.

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

1 incentivized company that is subject to the insurance premium
2 tax.

3 (b) The project agreement shall include provisions
4 for the incentivized company to return any unearned credit
5 amounts.

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

21 (2) The Secretary of Commerce may report to the
22 Department of Revenue any failure of an incentivized company
23 to meet the jobs, wage or investment requirements specified in
24 the project agreement. The report will be made by March 31 of
25 the year following the calendar year in which the failure
26 occurs and shall contain sufficient information for the
27 Department of Revenue to calculate the unearned portion of the

1 jobs credit or investment credit. The underpayment of the
2 applicable tax will be deemed to have occurred upon the filing
3 of the report. The report shall be treated as the filing of a
4 return by the incentivized company for purposes of any
5 applicable period of limitation.

6 (3) The Department of Revenue may assess an
7 incentivized company for any unearned portion of the
8 investment credit or jobs credit, with allowed interest and
9 penalties, pursuant to the terms of Chapter 2A or 29. The
10 liability shall be considered an underpayment of the tax
11 against which the respective credit was applied or refunded.

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

16 § 40-18-379.

17 (a) There is hereby created a permanent Joint
18 Legislative Advisory Committee on Economic Incentives,
19 hereinafter referred to as the committee.

20 (b) The committee shall be comprised of all of the
21 following persons:

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

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

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

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

7 (c) The commission shall hold an organizational
8 meeting within 30 days after the enactment of this act and
9 shall therein elect a chair and vice chair from among its
10 members. Thereafter, the commission shall meet at the call of
11 the chair or any majority of members thereof; provided that
12 the committee shall meet at least two times annually. Other
13 than the organizational meeting, such meetings shall be held
14 with the Secretary of Commerce in attendance, or his or her
15 designee. The committee may meet, act and conduct its business
16 during the sessions of the Legislature or any recess thereof,
17 and in the interim period between sessions.

18 (d) The committee shall adopt its own rules of
19 procedure for the transaction of committee business, and a
20 majority of the members present shall constitute a quorum for
21 the purpose of transacting or performing authorized duties.

22 (e) The committee shall monitor and evaluate the
23 management process and standards used by the Department of
24 Commerce in the development of project agreements and in the
25 awarding of economic development incentives as authorized by
26 the laws of this state. The committee may provide
27 recommendations to the Secretary of Commerce regarding the

1 same and shall act in an advisory role only. Such
2 recommendations may include certain identified minimum
3 standards to be set forth in project agreements and otherwise
4 in the awarding of economic development incentives, as well as
5 recommendations regarding the recruitment of certain
6 industries to the various geographic regions of the state. The
7 committee may also request from the Department of Commerce
8 specific, non-confidential information on successfully
9 negotiated and executed project agreements as well as
10 non-confidential information on unsuccessful project agreement
11 negotiations.

12 (f) The Department of Commerce shall provide to the
13 committee, upon request, an aggregated list of the amounts and
14 types of economic development incentives awarded, as well as
15 an analysis of the cost and benefits of the incentives
16 awarded. The Department of Revenue shall assist the Department
17 of Commerce in the calculations required in this section.

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

22 (h) In no event shall the Department of Commerce be
23 required to disclose matters which would cause it to violate
24 any nondisclosure agreement executed for a project. In no
25 event shall the Department of Commerce be required to disclose
26 matters which would cause the state of Alabama to be at a
27 competitive disadvantage in ongoing or future project

1 negotiations. The Department of Commerce shall not be required
2 under this act to disclose confidential information to the
3 committee that involves ongoing project negotiations.

4 (i) Meetings of the committee are exempt from
5 Chapter 25A of Title 36, provided that the minutes of each
6 meeting shall be made available for public inspection. In
7 order to balance the privacy needs of economic development
8 negotiations with openness to the public, the committee may
9 use code names in its deliberations about various applicants
10 and in the minutes of its proceedings.

11 § 40-18-380.

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

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

22 § 40-18-381.

23 (a) Nothing in this article shall be construed to
24 constitute a guarantee or assumption by the state of any debt
25 of any company nor to authorize the credit of the state to be
26 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
26 provisions of this article remaining after the application of
27 any exemptions, exclusions, deductions, or credits applicable

1 thereto, and after the payment of the expenses of
2 administration and enforcement of this article shall be
3 without delay deposited into the State Treasury to the credit
4 of Alabama Education Trust Fund.

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

25 Section 6. Articles 7, 7A and 9 of Chapter 18 of
26 Title 40, Code of Alabama 1975, are repealed; provided,
27 however, that those provisions shall remain in full force and

1 effect for any qualifying project which, within six months of
2 the effective date of this act, has evidenced its intent to
3 claim such incentives by the filing of a Form INT-1, the
4 execution of a project agreement pursuant to this act, or the
5 execution of a memorandum of understanding with the Department
6 of Commerce. In no case shall a project receive both the Jobs
7 Act Incentives and the incentives under Articles 7, 7A or 9 of
8 Chapter 18 of Title 40, Code of Alabama 1975. The Jobs Act
9 Incentives shall not be available to any project for which
10 substantial construction activities have begun by the
11 effective date of this act.

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

1 the effect of reducing or suspending any Jobs Act Incentive,
2 the Legislature shall make applicable appropriations from
3 available funds.

4 Section 8. All laws or parts of laws which conflict
5 with this act are repealed.

6 Section 9. This act shall become effective ninety
7 days following its passage and approval by the Governor, or
8 its otherwise becoming law.