HB58

164950-2

By Representative Baker

RFD: Economic Development and Tourism

First Read: 03-MAR-15

PFD: 02/27/2015
SYNOPSIS: This bill would enact the Alabama Jobs Act, to authorize and provide for incentives to certain businesses that create new jobs in Alabama. The incentives would require a project agreement with the state and would only be available upon a determination that the economic benefits of the incentives would be more than the cost of the incentives.

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

The bill would repeal various incentives currently offered to companies, including the capital credit. The bill would require clawbacks. The bill would only allow the incentives to be offered to companies meeting certain criteria. The
A bill would also establish an advisory committee on economic incentives.

A BILL
TO BE ENTITLED
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 credits; to make transferable the first three years of the investment credit, in certain limited circumstances; to provide for the distribution of the financial institution excise, insurance premium, and utility taxes when a company claims the jobs credit, the investment credit, or both; to make the Jobs Act Incentives available only for projects that fall within certain designated activities, that involve certain minimum new job levels, and that meet certain other standards; to require the Secretary of Commerce and Governor to make certain findings before approving a company to receive incentives; to require a project agreement; to allow the Governor to decrease the amounts and durations of the Jobs Act Incentives to ensure that the net economic benefits of the qualifying project would be positive; to provide for proof that incentives are due to be granted; to provide for the promulgation of forms for information to be submitted to a department of state government, and that such submissions shall be treated as tax returns; to provide for audits of companies claiming the Jobs Act Incentives; to require the clawback of incentives in certain cases; to create a permanent Joint Legislative Advisory Committee on Economic Incentives; to provide for the powers of such committee; to provide for the sunset of the act; to make legislative findings; to provide for the promulgation of regulations; to provide that
the incentives shall not be considered securities; to provide that this act shall not constitute a guarantee by the state of company debt nor the lending of the credit of the state to any company; to prohibit the adverse construction of the provisions of the act; to provide that no company shall have any right to incentives that are granted absent strict compliance with this act; to provide that no cause of action shall exist for the denial of any benefit under this act; to create a new Article 16 of Chapter 18 of Title 40, Code of Alabama 1975; to amend Sections 40-21-87 and 40-21-107, Code of Alabama 1975; to repeal Articles 7, 7A and 9 of Chapter 18 of Title 40, Code of Alabama 1975, for new projects; to provide for a transition from prior incentives; to allow for certain legislative appropriations in the event a portion of the act is held to be invalid; to provide for the severability of invalid provisions; to provide for the repeal of conflicting laws; to provide for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the “Alabama Jobs Act”.

Section 2. The legislature makes the following findings:

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

(b) It is in the best interests of the state to provide certain incentives to allow the state to foster
economic development through the recruitment of quality projects and the expansion of existing businesses within Alabama.

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

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

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

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

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

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

(i) The powers to be granted and the purposes to be accomplished by this act will create an environment for the recruitment of quality projects and the expansion of existing businesses within Alabama.
(j) Economic development through tax and financial incentives benefits the citizens of the state and is a public purpose of the state.

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

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

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

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

(3) COMPANY. Anyone or anything which has the powers to own a project and have employees.
(4) ELIGIBLE EMPLOYEES. Those employee positions set forth in a project agreement that will be the result of new jobs created by or through a qualifying project.

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

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

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

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

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

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

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

(9) JOBS ACT INCENTIVES. The jobs credit and the investment credit as authorized and provided for in this act.
(10) JOBS CREDIT. The annual incentive provided in Section 40-18-375.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A qualifying project must predominantly conduct an activity that is any one or more of the following:
(1) Described by NAICS Code 1133, 115111, 2121, 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482, 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493, 511, 5121 (other than 51213), 51221, 517, 518 (without regard to the premise that data processing and related services be performed in conjunction with a third party), 51913, 52232, 54133 (if predominantly in furtherance of another activity described in this article), 54134 (if predominantly in furtherance of another activity described in this article), 54138, 5415, 541614, 5417, 55 (if not for the production of electricity), 561422 (other than establishments that originate telephone calls), 562213, 56291, 56292, 927 or 92811.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Construction activities related to the qualifying project;

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

c. The subsequent equipping of the qualifying project; and

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

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

§ 40-18-374.

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

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

(1) The name of the incentivized company;

(2) The location of the qualifying project;

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

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

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

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

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

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

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

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

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

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

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

(15) Any other terms the parties deem necessary or desirable.
The Governor may decrease the amounts and durations of the Jobs Act Incentives to ensure that the anticipated revenues for the state will exceed the amount of tax incentives sought.

§ 40-18-375.

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

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

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

2. For each year of the incentive period for the jobs credit, the incentivized company shall submit to the Department of Commerce a certification as to the wages paid to eligible employees during the prior year. Following such examination as it deems necessary, the Department of Commerce may certify the information and deliver the same to the Department of Revenue. Thereafter, the Department of Revenue shall calculate the correct refund and issue it directly to the incentivized company.
(2)a. The jobs credit may be claimed as a credit against utility taxes actually paid. In any one year, if the credit exceeds the amount of taxes that are allowed to be offset by the project agreement and that are owed by the incentivized company, the incentivized company may carry the credit forward, to the extent allowed in the project agreement. No carryforward shall be allowed for more than five years. Rules similar to those used for Section 40-18-15.2 shall be applied.

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

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

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

§ 40-18-376.

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

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

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

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

(4) To offset utility taxes; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) To the extent the investment credit is used to
offset an insurance premium tax liability, the Department of
Finance shall promulgate regulations to ensure that the credit
would reduce the distribution for the Education Trust Fund,
but in no case would the investment credit reduce the
distributions for the State General Fund or the Alabama
Special Mental Health Trust Fund.
(3) To the extent the investment credit is used to offset liability for the tax imposed by Section 40-21-82, the Department of Finance shall promulgate regulations to ensure that the credit in no case would reduce the distribution for the Alabama Special Mental Health Trust Fund.


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

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

§ 40-18-378.

(a) The Department of Labor shall periodically verify the actual number of eligible employees employed at the qualifying project and the wages of the eligible employees during the relevant year. If the Department of Labor is not able to provide the verification utilizing all available resources, it may request any additional information from the incentivized company as may be necessary. The Department of Revenue may periodically audit any incentivized company to monitor compliance by the incentivized company with this article. Nothing in this article shall be construed to limit the powers otherwise existing for the Department of Revenue to audit and assess an incentivized company. The Department of Insurance shall have similar audit rights over any
(a) The project agreement shall include provisions for the incentivized company to return any unearned credit
amounts.

(b) An incentivized company shall be liable for any unearned portion of the jobs credit or investment credit it claims or transfers pursuant to this article. The jobs credit will be considered unearned when the incentivized company fails to pay the full amount of wages or create the full number of jobs upon which the credit was based and claimed. The investment credit will be considered unearned when the incentivized company fails to make the full capital investment upon which the credit was based and claimed or upon which the credit was valued and then transferred. The incentivized company shall be liable for only that portion of the jobs credit or investment credit that was unearned. Any credit claimed by an owner of an incentivized company is deemed to have been claimed by the incentivized company for purposes of this subsection.

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

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

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

§ 40-18-379.

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

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

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

(2) The chairs of the Senate Finance and Taxation General Fund and Education Fund committees;
(3) The Speaker of the House, or his or her
designee, and one member of the House of Representatives to be
appointed by the Speaker of the House; and

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

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

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

(e) The committee shall monitor and evaluate the
management process and standards used by the Department of
Commerce in the development of project agreements and in the
awarding of economic development incentives as authorized by
the laws of this state. The committee may provide
recommendations to the Secretary of Commerce regarding the
same and shall act in an advisory role only. Such
recommendations may include certain identified minimum
standards to be set forth in project agreements and otherwise
in the awarding of economic development incentives, as well as
recommendations regarding the recruitment of certain
industries to the various geographic regions of the state. The
committee may also request from the Department of Commerce
specific, non-confidential information on successfully
negotiated and executed project agreements as well as
non-confidential information on unsuccessful project agreement
negotiations.

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

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

(h) In no event shall the Department of Commerce be
required to disclose matters which would cause it to violate
any nondisclosure agreement executed for a project. In no
event shall the Department of Commerce be required to disclose
matters which would cause the state of Alabama to be at a
competitive disadvantage in ongoing or future project
negotiations. The Department of Commerce shall not be required under this act to disclose confidential information to the committee that involves ongoing project negotiations. (i) Meetings of the committee are exempt from Chapter 25A of Title 36, provided that the minutes of each meeting shall be made available for public inspection. In order to balance the privacy needs of economic development negotiations with openness to the public, the committee may use code names in its deliberations about various applicants and in the minutes of its proceedings.

§ 40-18-380.

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

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

§ 40-18-381.

(a) Nothing in this article shall be construed to constitute a guarantee or assumption by the state of any debt of any company nor to authorize the credit of the state to be given, pledged or loaned to any company.
(b) The provisions of this article shall not be construed in a manner adverse to the validity of any Jobs Act Incentives.

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

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

"§40-21-87.

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

"§40-21-107.

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

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

Section 6. Articles 7, 7A and 9 of Chapter 18 of
Title 40, Code of Alabama 1975, are repealed; provided,
however, that those provisions shall remain in full force and
effect for any qualifying project which, within six months of the effective date of this act, has evidenced its intent to claim such incentives by the filing of a Form INT-1, the execution of a project agreement pursuant to this act, or the execution of a memorandum of understanding with the Department of Commerce. In no case shall a project receive both the Jobs Act Incentives and the incentives under Articles 7, 7A or 9 of Chapter 18 of Title 40, Code of Alabama 1975. The Jobs Act Incentives shall not be available to any project for which substantial construction activities have begun by the effective date of this act.

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

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

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