HB424

198791-1

By Representatives Lovvorn, Scott, Crawford, Carns and Whitt

RFD: Ways and Means Education

First Read: 11-APR-19
SYNOPSIS: Under existing law, there are no economic incentives or tax credits extended to Alabama businesses for qualified research expenses incurred by Alabama companies that spend funds and resources in-house or pay Alabama research companies to conduct qualified research for new or improved products or services.

This bill would establish the Alabama Innovation Act that would provide for a research and development tax credit to certain Alabama companies modeled after the federal research and development tax credit. The credit would be based on in-house research and contract research expenses conducted in Alabama and consortium research expenses for qualified research conducted in Alabama. The credit could be taken against the income tax or the financial institution excise tax.

This bill would limit the Alabama Innovation tax credits to no more than $25 million of credits in any one calendar year; and no eligible company
or business could claim more than $2,000,000 in a single tax year. The credits would be claimed on a first-come, first-served basis.

A BILL
TO BE ENTITLED
AN ACT

To enact the Alabama Innovation Act; to allow a research and development tax credit for qualified research expenses in Alabama in the amount of 25 percent of new research at an Alabama research entity, and 10 percent of other research in Alabama; to provide that no more than $25 million of tax credits would be allowed in any one calendar year, and no one taxpayer would be allowed more than $2,000,000 in a single tax year; to allow the credits to offset the taxes in Chapters 16 and 18 of Title 40, Code of Alabama 1975, and estimated payments thereof; to provide that the income tax credits shall not affect estimated income tax payments before January 1, 2020; to provide that earned but unused credits could be carried forward for five years; to create an allocation system; to provide for the promulgation of forms for information to be submitted to the Department of Revenue, and that such submissions shall be treated as tax returns; to provide that no taxpayer shall have any right to credits that are granted absent strict compliance with this act; to require that the tax credit only apply to research
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as the Alabama Innovation Act of 2019.

Section 2. A new Article 22 of Chapter 18 of Title 40, Code of Alabama 1975, is created to read as follows:

§ 40-18-470.

For the purpose of this article, the following words and phrases shall have the following meanings:

(a) ALABAMA RESEARCH ENTITY. One or more of the following:

(1) A public or private university in the state;

(2) A university research foundation affiliated with a public or private university in the state;

(3) A public two-year college in the state;

(4) A publicly-owned hospital in the state;

(5) An entity duly formed, domiciled or qualified to do business in the state that meets each of the following criteria:


b. Is predominantly engaged in research and non-commercial development activities undertaken for the purpose of discovering information that is technological or
biotechnological in nature, involves a process of experimentation, and the application of which is intended to be used in the development of a new or improved product, service or treatment;

c. Has its principal place of business in the state; and

d. Has, or is anticipated to have, at least 75 percent of its property and payroll in Alabama, using the property and payroll factor calculations found in Title 40, Chapters 16 or 18, as appropriate.

(b) APPROVED ACTIVITY. The conduct of an activity that is predominantly any one or more of the following:

(1) Described by NAICS Code 1133, 115111, 2121, 22111, 221330, 31 (other than 311811), 32, 33, 482, 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 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), 54138, 5415, 5417, 55 (if not for the production of electricity).

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

(3) A target of the state’s economic development efforts pursuant to either of the following:

a. 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 or

b. A type listed in a rule issued by the Department of Commerce pursuant to the Alabama Administrative Procedure Act. Notwithstanding the foregoing, an approved activity shall not include a headquarters facility otherwise allowed as an approved activity.

(c) CONSORTIUM RESEARCH EXPENSES. Any amount paid or incurred by the taxpayer to any Alabama research entity for qualified research, but not including any expenses for research activities performed outside Alabama.

(d) CONTRACT RESEARCH EXPENSES. Any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research, but not including any of the following:

(1) Consortium research expenses; or

(2) Expenses for research activities performed outside Alabama.

(e) DEPARTMENT. The Alabama Department of Commerce.

(f) IN-HOUSE RESEARCH EXPENSES. The meaning given in 26 U.S.C. § 41(b)(2), but not including wages paid or incurred to employees residing outside Alabama.

(g) NAICS CODE. Any sector, subsector, industry group, industry or national industry of the 2017 North American Industry Classification System, or any similar classification system developed in conjunction with the United
(h) QUALIFIED RESEARCH. The meaning given in 26 U.S.C. § 41(d), if conducted in Alabama in pursuit of an approved activity. In applying any terms in 26 U.S.C. § 41, “qualified research” shall have the meaning given herein.

§ 40-18-471.

(a) An innovation tax credit is allowed for qualified research conducted in Alabama. The tax credit shall be in an amount equal to the sum of the following amounts:

(1) 10 percent of the following:
   a. In-house research expenses and contract research expenses for qualified research conducted in Alabama during the taxable year, minus
   b. Fifty percent of the in-house research expenses and contract research expenses conducted in Alabama, on average, over the 3 taxable years preceding the taxable year for which the credit is being determined.

(2) 25 percent of the following:
   a. Consortium research expenses for qualified research conducted in Alabama during the taxable year, minus
   b. Fifty percent of the consortium research expenses conducted in Alabama, on average, over the 3 taxable years preceding the taxable year for which the credit is being determined.

(b) The innovation tax credit may offset the taxes levied by Chapters 16 and 18, or an estimated payment of the
tax due under Chapter 16 or 18, but not below zero. In no
event shall the credits provided for by this article be
allowed to reduce any estimated payment of the taxes levied by
Chapters 16 and 18 due for tax period ending before January 1,
2020.

(c) All other state income tax and financial
institution excise tax credits shall be applied prior to the
application of the tax credit provided in this section.
§ 40-18-472.

(a) If in any one tax year the approved innovation
tax credit exceeds the amount of the taxpayer’s applicable tax
liability, the taxpayer may carry forward the unused tax
credit. However, no carryforward shall be allowed for more
than five tax years. Rules similar to those used for Section
40-18-15.2 shall be applied.

(b) A taxpayer may assign and convey the innovation
tax credit to another entity if all of the assets of the
taxpayer are assigned and conveyed in the same transaction.
Proof of such transfer shall be submitted to the department.

(c) To the extent the innovation tax credit is used
to offset financial institution excise tax liability, in
making the report required by Section 40-16-6(d), the
financial institution receiving the credit shall not take into
account the activity for which the tax credit is given. The
tax credit shall be applied only to the state portion of the
tax liability and shall not offset or reduce the financial
institution excise tax distribution made to municipalities and counties pursuant to Section 40-16-6.

(d) To the extent the innovation tax credit is utilized by the taxpayer or by a permitted transferee, no deduction for the related expenses shall be allowed.

§ 40-18-473.

The maximum amount of innovation tax credits all taxpayers shall be allowed under Section 40-18-471 in any one calendar year shall be limited to $25 million, and no taxpayer shall receive an innovation tax credit of more than $2,000,000 in a single tax year. The tax credits shall be allocated among various taxpayers using the procedures described in this section.

(a) Each taxpayer who wishes to claim an innovation tax credit shall file an application with the department showing the amount of the tax credit which the taxpayer expects in good faith to claim during the tax year. No application and no claim shall exceed $2,000,000. The applications shall be submitted electronically to the department between March 15 and December 31, and such applications shall apply to the tax year that begins during that same calendar year.

(b) As applications are submitted, the department shall approve any the department deems sufficient under this article, until the total approved applications represent $25 million of anticipated innovation tax credits. All applications received during the application period up to the
$25 million limit is reached shall receive approval for the full amount applied for. If the total amount of all of the applications shall exceed $25 million, each applicant shall receive a pro rata share of the credits available at the start of that day. To the extent that the applications are not approved by December 31, the portion not approved shall be deemed conditionally denied by the department. Taxpayers may continue to submit applications after the $25 million cap is reached, and applications that the department deems otherwise sufficient shall be deemed conditionally denied but maintained in the order received.

(c) Following the completion of the qualifying research expenditures, the taxpayer shall submit records to the department sufficient to document qualification for the credit. After reviewing taxpayer records and finding them satisfactory to document qualification for the credit, the department shall issue a certificate to the taxpayer for the amount of credit not to exceed the amount originally applied for. The department shall deliver the same to the Department of Revenue.

(d) If a tax return submitted for the corresponding tax year indicates that the full amount of the innovation tax credit with respect to an approved taxpayer was not claimed for use in the current or a carryforward tax year, the department shall approve, in the order they were received, the applications that were sufficient but initially deemed conditionally denied until the approved applications represent
in the aggregate $25 million of approved innovation tax
credits. The department shall timely notify all taxpayers who
filed such applications.

(e) The calculations required to be made by the
Department of Revenue shall be based on the initial tax
returns filed by taxpayers who had innovation tax credits
approved. No taxpayer may amend a tax return to claim an
innovation tax credit, or a larger amount of an innovation tax
credit, that was not claimed on its tax return filed initially
with the Department of Revenue, unless the amendment is to
claim a credit that was deemed conditionally denied but later
approved by the department, in the amount so approved.

§ 40-18-474.

For any taxpayer that enters into an economic
development project agreement with the state, the following
shall apply:

(a) For any innovation tax credits which have not
yet been allocated for the current year, the project agreement
may provide for an allocation of innovation tax credits to the
taxpayer, to the extent otherwise in compliance with this
article. No such allocation of innovation tax credits shall be
subject to the proration provided for in Section 40-18-473(b).

§ 40-18-475.

(a) All filings made by a private party with either
the Department of Revenue or Department of Commerce shall be
made according to the rules and using forms promulgated by
such department. Any such filing shall be treated as a tax
return, subject to taxpayer privacy restrictions as well as any penalties that may be imposed by the Department of Revenue.

(b) Nothing in this article shall be construed to make available to any taxpayer any right to the benefits conferred by this article absent strict compliance with this article.

(c) The Departments of Commerce and Revenue are authorized to issue rules under the Alabama Administrative Procedure Act as necessary to implement and administer the provisions of this article. This article shall be construed generally to conform to 26 U.S.C. § 41, except for percentage reductions specified therein. In the event that 26 U.S.C. § 41 should be repealed or suspended by Congress in any year, the credit provided in this article shall refer to and be based on the version of 26 U.S.C. § 41 as it existed on the last day prior to the effective date of such repeal or suspension.

§40-18-476.

Reporting requirements.

(a)(1) Effective January 1, 2021, taxpayers receiving tax credits pursuant to this act shall file an annual informational report in a manner as prescribed by the Department of Revenue. All information submitted to the department by taxpayers claiming or seeking certification of a credit shall be subject to the confidentiality provisions of Section 40-2A-10.
(2) The information on the reports required by this section shall be consistent with the information required by the Legislature pursuant to Section 40-1-50, and rules adopted thereunder. Aggregated information provided pursuant to this section is exempt from the confidentiality provisions of Section 40-2A-10 and shall be provided by the department to the Legislature in accordance with Section 40-1-50 and rules adopted by the Department of Revenue.

Section 3. If a court of competent jurisdiction adjudges invalid or unconstitutional any clause, sentence, paragraph, section, or part of this act, such 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.

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

Section 5. Unless extended by an act of the legislature, both houses concurring, this act shall sunset on December 31, 2024.

Section 6. Subject to Section 5 hereof, this act shall become effective for tax years beginning on or after January 1, 2020, following its passage and approval by the Governor, or its otherwise becoming law.