HB540

201085-3

By Representative Poole

RFD: Ways and Means Education

First Read: 02-MAY-19
To make legislative findings; to amend Sections 40-18-376, 40-18-376.1, 40-18-410, 40-18-411, 40-18-412, 40-18-413, and 40-18-414, Code of Alabama 1975; to add new Sections 40-18-6.1, 40-18-8.1 and 40-18-376.3, Code of Alabama 1975; to add a new Article 2C to Chapter 10 of Title 41, Code of Alabama 1975; to add new tools for the attraction of new and expanding businesses in rural Alabama; to attract high-tech companies to Alabama; to add new tools for the attraction of new and expanding technology companies to Alabama; to make various enhancements to Alabama’s incentives laws; to enhance Alabama’s participation in the opportunity zone program; to provide for the repeal of conflicting laws; and to provide for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This bill shall be known as the “Alabama Incentives Modernization Act.”

Section 2. The Legislature finds as follows:

(a) While Alabama’s incentive programs have succeeded in growing industry in the more populated parts of
the State, Alabama’s rural communities have not enjoyed the same rates of success.

(b) Alabama’s incentives grew out of a need to attract heavy industry to the State. Now, Alabama must also prepare for the future by attracting and retaining high-tech companies, and preparing and retaining a workforce trained for such jobs.

(c) New tools must be brought to bear to solve Alabama’s rural and high-tech deficits.

(d) It is a public purpose to expand Alabama’s incentives laws to attract and retain companies in rural Alabama, and high-tech companies and workers throughout the State. The tools used in this bill are urgently needed to solve these problems.

(e) The Legislature finds that the enhancements to the Alabama Jobs Act, as found in this bill, may be made without compromising on the strict requirement that the state shall not offer any such incentives to the extent that the tax incentives sought exceed the anticipated revenues to the state, as required by Section 40-18-373(1)c., Code of Alabama 1975.


"§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 or 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 subdivision, 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 subdivision (1). This subdivision (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; and

"(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 subsection
(a)(1), are both subject to the tax listed in subsection
(a)(2), or are both subject to the tax listed in subsection
(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 subsection (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 Official Recompilation of the Constitution of Alabama of 1901, 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.

"§40-18-376.1.

"(a) The provisions in this section shall apply to any targeted county, a term defined in this article to mean any Alabama county that has a population of 250,000 or less, as determined by the Commissioner of Labor as of each January 1 using the most current data available from the United States Departments of Labor or Commerce, the United States Bureau of the Census, or any other federal or state agency or department.

"(b) In making the findings required by Section 40-18-373(a), a company that proposes a qualifying project in a targeted county shall be an approved company for purposes of this section only if the Secretary of Commerce makes the additional finding that the qualifying project will increase the economic diversity of, or otherwise benefit, the targeted county.

"(c) For purposes of determining in Section 40-18-372(2)b. whether a qualifying project may receive the jobs act incentives, a project to be located in a targeted county shall employ at least 25 ten new employees and shall involve, directly or indirectly, at least $2 million of
capital, absent a finding of extraordinary circumstances by
the Secretary of Commerce.

"(d) If the qualifying project is located in a
county which is deemed to be a targeted county on the date the
project agreement is executed, the following shall be
applicable:

"(1) The jobs credit provided in Section
40-18-375(a) shall be 4.0 percent of the wages paid to
eligible employees during the prior year; and

"(2) The investment credit provided in Section
40-18-376(a) shall have an incentive period of 15 years, but
only if the qualifying project is expected to sell the
majority of its output or services to a business located in
Alabama that is described in Section 40-18-372(a), so that the
transit distance for the output or services shall be less than
50 miles.

"(e) Each year, the incentives in subsection (d) may
be extended to no more than two qualifying projects not in
targeted counties. Such incentives shall be granted in project
agreements executed by the Governor on the recommendation of
the Secretary of Commerce.


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

“(1) ECONOMIC DEVELOPMENT ORGANIZATION. A local
economic development organization or a state economic
development organization.
(2) GROWING ALABAMA CREDIT. The credit provided for in Section 40-18-413(a).

(3) INDUSTRY OR BUSINESS. An entity which would conduct at a site an activity that is primarily described in Section 40-18-372(1).

(4) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION. Organizations which are determined by the Department of Commerce to meet both of the following criteria:

a. The organization is an Alabama entity not operating for a profit, including, but not limited to, a municipality or county, an industrial board or authority, a chamber of commerce, or some other foundation or Alabama nonprofit corporation charged with improving a community or region of the state.

b. The organization has a record of supporting or otherwise participating in economic development activities in some part of Alabama.

(5) RENEWAL OF ALABAMA COMMISSION. The Renewal of Alabama Commission created by Section 40-18-402.

(6) SITE. Real property owned by a local economic development organization and intended for use by an industry or business.

(7) STATE ECONOMIC DEVELOPMENT ORGANIZATION. Organizations which are determined by the Department of Commerce to be an Alabama entity not operating for a profit which is charged with improving the state or a region of the state.
§40-18-411.

(a) (1) A local economic development organization which owns a site may apply to the Department of Commerce for funding to solve an inadequacy involving the site. The application by the local economic development organization shall include at least one or both of the following:

- a. If there is a pending expression of interest about the site from an industry or business, a list of the site preparation or public infrastructure work needed to make the site acceptable to the industry or business.

- b. If the site has been offered to one or more industries or businesses but the offer did not result in the industry or business locating on the site, a list of the site preparation or public infrastructure work which, if it had been completed, would have made the site acceptable to the industries or businesses; or

- c. If the site is an industrial or research park which needs connections to interstates, highways, roadways, rail systems, or sewer, fiber, electrical, gas, or water infrastructure, a list of the site preparation or infrastructure work needed.

(2) An economic development organization may apply to the Department of Commerce for funding to undertake any of the following issues:

- a. A marketing program to encourage persons trained in fields related to science, technology, engineering, or mathematics to remain in Alabama; provided that the
application is accompanied by an economic impact report on
such program;

"b. The creation, operation, or support of an
accelerator program for technology companies, as described in
Section 40-18-376.3(c)(2); provided that the application is
accompanied by an economic impact report on such program; or

"c. The construction, maintenance, promotion,
operation, management, leasing, and subleasing of an
Agricultural Center which includes a multi-use facility and
related commercial and non-commercial structures for
livestock, equestrian, small animal shows and events,
spectator events, trade shows, educational conferences,
agricultural and agricultural-related industries, educational,
demonstrational or training purposes, educational and training
conferences or events, recreational vehicle rallies,
recreational vehicle multi-day parking, hosting of corporate
and non-corporate organization meetings, use as fair grounds,
operation of retail activities, and other events and
facilities expected to draw participants and spectators from
states located across the southeastern United States, with a
projected total annual economic impact upon completion of all
phases of the Agricultural Center at least $35,000,000 and
with the related and supporting infrastructure and facilities
having a projected capital expenditure upon completion of all
phases of the Agricultural Center of at least $100,000,000;
provided that the application is accompanied by an economic
impact report on the Agricultural Center.
(b) For any site preparation or public infrastructure work listed in an application to the Department of Commerce, provided in subsection (a)(1), the application shall include quotes for the completion of such work, following compliance with the procedures set forth by the Department of Economic and Community Affairs, as if the organization were disbursing state funds received from such department.

(c) The application provided in subsection (a)(1) shall include an estimate of the number of jobs, wages, and capital investment which would have been undertaken by the industries or businesses referred to in subsection (a).

(d) The application provided in subsection (a) shall include proof that the local economic development organization has in full force and effect a conflict of interest policy consistent with that found in the instructions to Form 1023 issued by the Internal Revenue Service.

(e) The application provided in subsection (a) shall include a notarized affirmation by an officer of the local economic development organization that the submission of the application did not violate the conflict of interest policy referred to in subsection (d).

§40-18-412.

(a) Following a review, if the Department of Commerce should approve the application, provided in Section 40-18-411(a), it shall forward the application to the Renewal of Alabama Commission.
(b) The Renewal of Alabama Commission shall consider the application and shall approve it if it deems it worthy of approval. As to applications for projects located in communities which have the potential to provide additional funding separate from the Growing Alabama Credits, the commission shall take into consideration whether such separate funding is to be provided to the project which is the subject of the application. Meetings of the commission are subject to Chapter 25A of Title 36. Notwithstanding the foregoing, the commission may meet by telephone or some other telecommunications device so long as members of the public are allowed the opportunity to listen to or otherwise observe the commission’s deliberations.

(c) The approval of an application by the commission shall specify the amount of money which the local economic development organization is allowed to receive so that it can complete the site preparation or public infrastructure work specified in the application.

(d) Following approval by the commission, the Department of Commerce shall enter into an agreement with the local economic development organization which shall do all of the following:

(1) Require the local economic development organization to use funding received as a result of this law only for the purposes approved by the commission as expressed in the agreement.
"(2) Require the local economic development organization to make periodic reports, not more often than annually, to the Department of Commerce and the commission, as required by the commission, on the disposition of the funds. As to a project described in Section 40-18-411(a)(1), the report shall include information on the marketing of the site, and the ultimate use of the site until such time as it makes a final report. As to a project described in Section 40-18-411(a)(2), the report shall include an economic impact report.

"(3) Require the local economic development organization to provide a review of its financial accounts as directed by the Renewal of Alabama Commission.

"(e) For any approved applications, the Department of Commerce shall notify the Department of Revenue of the information specified in subsection (c).

"(f) The Department of Commerce shall publish on its website a list of all approved applications, and, a list of the economic development organizations which made the approved applications.

"§40-18-413.

"(a) A taxpayer is allowed a Growing Alabama Credit to be applied against the tax levied by this chapter. In no event shall the Growing Alabama Credit cause a taxpayer's income tax liability to be reduced by more than 50 percent. Unused credits may be carried forward for no more than five years.
(b) Growing Alabama Credits shall be granted to taxpayers using an online system administered by the Department of Revenue. The online system shall allow taxpayers to agree to make a cash contribution to a local economic development organization which was approved by the Renewal of Alabama Commission, as provided in Section 40-18-412. The online system shall ensure that credits are not granted for contributions to a local economic development organization in excess of the amounts approved by the Renewal of Alabama Commission, as provided in Section 40-18-412.

(c) In no event shall Growing Alabama Credits be allowed in excess of five million dollars ($5,000,000) for fiscal year 2016. In no event shall Growing Alabama Credits be allowed in excess of ten million dollars ($10,000,000) per year for fiscal years 2017, 2018, 2019, and 2020.

(d) The Renewal of Alabama Commission shall reserve at least 25 percent of the amounts specified in subsection (c) for projects in targeted counties described in Section 40-18-376.1.

(e) To the extent that a Growing Alabama Credit is used by a taxpayer, the taxpayer shall not be allowed any deduction which would have otherwise been allowed for the taxpayer's contribution. Credits may only be claimed by the donating individual or corporate entity and may not be assigned or transferred to any other taxpayer. A taxpayer may not claim a credit for a donation made by any other entity, including an entity taxed under subchapter S or subchapter K.
of which the taxpayer is an owner, shareholder, partner, or member.

"§40-18-414.

"(a) Upon receipt of funding provided by the tax credit process in Section 40-18-413, the local economic development organization shall proceed with the site preparation or public infrastructure work that was specified in the application required by Section 40-18-411.

"(b)(1) As to a project described in Section 40-18-411(a)(1), the economic development organization shall report to the Department of Commerce upon the completion of the site preparation or public infrastructure work, upon the transfer of the site to an industry or business, and at other times as may be required or requested by the Department of Commerce.

"(2) As to a project described in Section 40-18-411(a)(2), the local economic development organization shall report to the Department of Commerce upon the completion of the site preparation or public infrastructure work, upon the transfer of the site to an industry or business, and at other times as may be required or requested by the Department of Commerce.

"(c) The Department of Commerce shall make an annual report on the use of funds pursuant to this article to the Chair of the House Ways and Means Education Committee, the Chair of the Senate Finance and Taxation Education Committee, and the members of the Joint Legislative Advisory Committee on
Economic Incentives established by Section 40-18-379, at the
times, and in the manner, requested by the committee.
Beginning with the report for fiscal year 2019, the report
shall include a study of the economic impacts from the
expenditures made in prior years."

Section 4. New Sections 40-18-6.1 and 40-18-8.1 are
added to Article 1 of Chapter 18 of Title 40 to read as
follows:

Section 40-18-6.1.
(a) The provisions in 26 U.S.C. § 1400Z-2 shall be
applicable to an investment in an opportunity fund with at
least 75 percent of its qualified opportunity zone property,
by dollar value, located in Alabama. The Alabama Department of Economic and Community Affairs shall
promulgate rules for determining whether a qualified
opportunity zone business is located in an Alabama opportunity
zone. This subsection (a) shall be applicable in calculating
each of the following:

(1) The income tax levied by this chapter, or the
estimated income tax payment; and

(2) The financial institution excise tax found in
Chapter 16.

(b) Any approved opportunity fund may enter into a
project agreement with ADECA to provide to such fund’s
investors impact investment tax credits against any tax
liability described in paragraphs (1) and (2) of subsection
(a). Such impact investment tax credits shall be allocated
annually, but only to the extent that one or more projects undertaken by the fund are not producing the returns provided in the project agreement. The project agreement may authorize the fund to allocate the credits 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. Unused credits may carry forward for ten years.

(c) The project agreement shall require an approved opportunity fund to obtain investment from a qualified fund and require that such qualified fund receive a fixed portion of any distributions in excess of the amounts stated in the project agreement.

(d)(1) In no event shall the credits allowed under this section exceed $50 million cumulatively. In no event shall the credits be allocated during the first four years of the existence of the fund, but credits may be allocated in the fifth year to account for inadequate aggregate returns during the first four years. Credits may not be allocated to projects in which an approved opportunity fund has committed to invest prior to the effective date of this act.

(2) The project agreement shall provide that ADECA shall receive regular financial performance information about the fund, and the information shall, at a minimum, include all information provided to other investors in the fund. Prior to claiming the credits provided in paragraph (1), a fund shall submit to ADECA a certification as to the financial
performance of the fund or assets which are the subject of the project agreement. ADECA may choose to request other information, and the fund shall comply with such requests. Following such examination as it deems necessary, ADECA may certify the information and deliver the same to the Department of Revenue. Thereafter, the Department of Revenue shall allow the credits in the amount determined by ADECA.

(e) ADECA may charge reasonable fees for its negotiation and entry into project agreements provided herein, and it may charge fees for its financial and oversight audits of such funds. ADECA may retain consultants to assist it with the powers and responsibilities delegated to it herein.

(f) For purposes of this Section 40-18-6.1:

(1) “ADECA” shall mean the Department of Economic and Community Affairs.

(2) An “approved opportunity fund” is a fund which meets all the criteria in Section 41-10-47.01(b)(2).

(3) A “qualified fund” is a fund which meets all the criteria in Section 41-10-47.01(b)(3).

(g) ADECA shall not enter into any project agreements under this section after December 31, 2024.

Section 40-18-8.1.

(a) A qualified employee’s gain shall not be recognized upon the disposition of his or her ownership interest in a qualified entity, and a qualified investment fund’s gain shall not be recognized upon the disposition of the fund’s ownership interest in a qualified entity.
(b) Subsection (a) shall be applied as to each of the following taxes:

(1) The income tax levied by this chapter, or the estimated income tax payment; and

(2) The financial institution excise tax found in Chapter 16.

(c) The following terms shall have the following meanings:

(1) A “company” is anyone or anything with the powers to conduct a lawful business.

(2) The “disposition date” is the date on which an ownership interest in a qualified entity is sold or otherwise disposed of, triggering a capital gain.

(3) A “qualified entity” is any company which meets all of the following:

   a. As of the effective date of this act, Alabama is not the company’s headquarters, the place of residence of its top three executives, or the place of residence of at least 75 percent of its employees;

   b. The company has at least 100 employees on the disposition date;

   c. For a period of at least three years prior to the disposition date and for a period of at least five years after the disposition date, Alabama is the company’s headquarters, the place of residence of its top three executives, and the place of residence of at least 75 percent of its employees; and
d. From the date that the company makes Alabama its headquarters and continuing until the date which is five years after the disposition date, the company meets all criteria set forth in Section 40-18-376.3(c).

A company shall not be eliminated from the definition of a “qualified entity” merely because the disposition is in the form of a sale of substantially all of the assets of such company to a successor company, or in the form of a merger of such company into a successor company, so long as such successor company itself meets all criteria set forth in subparagraphs a., b, and d., and if Alabama is such successor company’s headquarters, the place of residence of its top three executives, and the place of residence of at least 75 percent of its employees for a period of at least five years after the disposition date.

(4) A “qualified employee” is any employee of a qualified entity who meets all the following:

a. The employee’s primary residence is not in Alabama on the effective date of this act;

b. The employee’s primary residence is in Alabama continuously for the period beginning three years prior to the disposition date and continuing for five years after the disposition date;

c. Within three months of the disposition date, the employee ceases employment at the qualified entity;

d. Within nine months of the disposition date, the employee begins employment at or ownership or some other
company which meets all the criteria set forth in Section 40-18-376.3(c); and

  e. The employee has an educational degree in a field which the Department of Revenue determines by regulation to fall within the general areas of science, technology, engineering, and mathematics.

  e. The employee demonstrates to Alabama Department of Revenue that he or she has an educational degree within the general areas of science, technology, engineering, and mathematics.

(5) A “qualified investment fund” is any company which meets all the following:

  a. The fund made its investment in the qualified entity after the effective date of this act; and

  b. For a period of five years after the disposition date, the fund invests the moneys resulting from the disposition in another qualified entity.

(d) The Department of Revenue may assess a qualified employee for any exclusion from income under this section to which the employee is not ultimately entitled, with allowed interest and penalties, pursuant to the terms of Chapter 2A or 29. The statute of limitations shall be tolled for a period of ten years beginning on the date of the return under which the exclusion from income in this section is claimed. The Department of Revenue may prescribe forms for the enforcement of this act.
Section 5. A new Section 40-18-376.3 is added to Article 16 of Chapter 18 of Title 40 to read as follows:

(a) This section shall be applicable to a technology company, as defined herein, so long as there is a project agreement which provides that Alabama is or will become the company’s headquarters, the place of residence of its top 3 executives, and the place of residence of at least 75 percent of its employees.

(b) If provided for in the project agreement, the following shall be allowed to any company which meets all the criteria in subsection (a):

(1) A qualifying project shall be deemed to be in existence notwithstanding the requirements of Section 40-18-372 so long as at least five new employees are employed at the qualifying project, absent a finding of extraordinary circumstances by the Secretary of Commerce; and

(2) The jobs credit provided in Section 40-18-375(a) shall include an additional 2.0 percent above that otherwise allowed.

(c) A “technology company” is any company which meets all the criteria in paragraph (1) or paragraph (2):

(1) A company which earns at least 75 percent of its revenues from any of the following:

a. Activities within subsector 518; industry group 5112, 5121 (other than 51213), 5415, or 5417; or industry 51913 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; or

b. The use of technology to develop new coding or processes for the creation or delivery of goods or services in the following fields, or any additional activities determined by the Secretary of Commerce to be beneficial to the enhancement of businesses rooted in any of the following fields:

1. any of the fields of education, healthcare, energy, agriculture, infrastructure, software, robotics, nutrition, aerospace, automotive, or financial services; or

2. any fields related to science, technology, engineering, or mathematics.

(2) A company which, for a fixed term, educates and mentors early-stage technology companies recruited to a location in Alabama, with the goal of accelerating such companies’ development and growth.

Section 6. A new Article 2C is added to Chapter 10 of Title 41 to read as follows:

Article 2C.

Section 41-10-46.01

(a) Any qualified fund may invest at least three percent of its corpus in one or more approved opportunity funds.

(b) The following terms shall have the following meanings:
(1) “ADECA” shall mean the Department of Economic and Community Affairs.

(2) “Approved opportunity fund” shall mean any fund approved by ADECA as meeting all of the following:

   a. ADECA determines that the fund has the capacity to improve Alabama's low-income opportunity zone communities by approving an application showing all of the following:
      1. the amount of existing committed capital or potential to raise committed capital;
      2. the investment track record or strength of the applicant’s management team;
      3. the existing project pipeline or strategy for developing new pipeline;
      4. the fund structure and anticipated returns within that fund structure;
      5. the presence of sound legal, accounting, and compliance policies and procedures;
      6. a strategy for measuring, tracking, and annual reporting to ADECA on how the approved opportunity fund is achieving investment outcomes set forth in its applications; and
      7. one or more clear and demonstrable partnerships with local or statewide public or nonprofit entities to ensure community engagement.

   b. ADECA determines that the fund has committed to deploying a substantial portion of its capital into qualified
opportunity zone property in Alabama within one or more of the following asset classes:

1. rural areas described in Section 40-18-376.1(a);
2. technology companies which meet all the criteria in Section 40-18-376.3(c), or facilities to house such companies;
3. companies or projects described in Section 40-18-372(1), or facilities to house such companies or projects;
4. workforce training;
5. affordable housing, in which case the burden shall be on the fund to demonstrate rent levels charged and why those rents are appropriate for a particular geographic area;
6. remediation of blighted or abandoned property, in which case the burden shall be on the fund to demonstrate why targeted properties qualify as blighted or abandoned;
7. revitalization of distressed urban neighborhoods, in which case the burden shall be on the fund to demonstrate why a neighborhood is distressed and why its investment strategy will revitalize the neighborhood; or
8. companies or projects that will have substantial, measurable impact on social, environmental, or economic conditions in low-income areas, or facilities to house such companies or projects, in which case the burden shall be on the fund to demonstrate why such companies or projects will have such substantial effects.
In addition, ADECA may determine that a fund meets this subparagraph b. if it can demonstrate that it will create substantial wealth within and for residents of Alabama’s low-income and rural communities and will directly track the wealth created.

c. The fund commits to investing at least 75 percent of its committed capital in qualified opportunity zone property located in Alabama. The Department of Revenue shall promulgate rules for determining whether an investment in a corporation or partnership should be considered to be located in Alabama. For purposes of this subparagraph c., “qualified opportunity zone property” shall have the meaning given to it in 26 U.S.C. § 1400Z-2(d)(2).

(3) “Qualified funds” are each of the following:

a. The Alabama Trust Fund created by Amendment No. 450 to the Constitution of Alabama of 1901;

b. The Alabama Game and Fish Fund created by Section 9-2-20, the Alabama Game and Fish Endowment Fund created by Section 9-2-20.1, and the Alabama Nongame Wildlife Endowment created by Section 9-2-20.2;

c. The Alabama Marine Resources Endowment Fund created by Section 9-11-23 and the Marine Resources Fund referred to therein;

d. The County Government Capital Improvement Fund created by Section 11-29-4;

e. The Municipal Government Capital Improvement Fund created by Section 11-66-4;
f. The Alabama Corrections Institution Finance Authority funds referred to in Chapter 2 of Title 14;
g. The Public Health Finance Authority funds described in Chapter 3A of Title 22;
h. The Public Road and Bridge funds described in Chapter 6 of Title 23;
i. The Unemployment Compensation Trust Fund created by Section 25-4-30;
j. The Mental Health Finance Authority funds described in Article 11 of Chapter 10 of Title 41;
k. The Incentives Financing Authority funds described in Division 1 of Article 16 of Chapter 10 of Title 41;
l. The Alabama Senior Services Trust Fund created by Section 41-15C-1; and
m. Any fund of funds representing two or more of the funds listed in subparagraphs a. through l.
(c) ADECA may charge application fees for the powers and responsibilities delegated to it herein, and it may charge fees for its financial and oversight audits of such funds. ADECA may retain consultants to assist it with the powers and responsibilities delegated to it herein.

Section 7. Both of the following shall be considered industrial or research enterprises for purposes of Chapter 9B of this Title 40, approved activities for purposes of Chapter 9G of this Title 40, and qualifying projects for purposes of Article 16 of Chapter 18 of this Title 40:
(a) any trade or business predominately consisting of an activity described in 40-18-376.3(c); and 
(b) the Agricultural Center described in Section 40-18-411(a)(2)c.

For purposes of Article 16 of Chapter 18 of Title 40, the Governor may decrease the amounts and durations of the jobs act incentives. The Department of Commerce may charge fees for amendments to project agreements entered into under Article 16 of Chapter 18 of Title 40.

As to the Agricultural Center described in Section 40-18-411(a)(2)c., all of the years of the investment credit may be made transferable in the project agreement, using rules similar to those provided in Section 40-18-376(b)(3).

Section 8. The departments of Economic and Community Affairs, Revenue, Commerce, and Finance shall implement this act, exercise all powers as authorized in this act, and promulgate regulations to implement and administer the provisions of this act.

Section 9. 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 10. All laws or parts of laws which conflict with this Act are repealed.
Section 11. This Act shall become effective sixty days following its passage and approval by the Governor, or following its otherwise becoming a law.
House of Representatives

Read for the first time and referred to the House of Representatives committee on Ways and Means
Education............................................. 02-MAY-19

Read for the second time and placed on the calendar with 1 substitute
and.................................................... 14-MAY-19

Read for the third time and passed as amended............................... 16-MAY-19
Yeas 98, Nays 0, Abstains 4

Jeff Woodard
Clerk