

1 SB78  
2 197535-1  
3 By Senators Orr, Allen and Whatley  
4 RFD: Finance and Taxation Education  
5 First Read: 05-MAR-19

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8 SYNOPSIS: Under existing law, there are no economic  
9 incentives extended to Alabama businesses for  
10 qualified research expenses incurred by Alabama  
11 companies that spend funds and resources in-house,  
12 or pay Alabama research companies to conduct  
13 qualified research for new or improved products or  
14 services.

15 This bill would establish the Alabama  
16 Innovation Act that would provide for research and  
17 development enhancement grants to certain Alabama  
18 companies. The grant would be based on in-house  
19 research and contract research expenses conducted  
20 in Alabama and consortium research expenses for  
21 qualified research conducted in Alabama.

22 This bill would limit the research and  
23 development enhancement grants to no more than \$8  
24 million of grants in the 2020 fiscal year, and \$5  
25 million each fiscal year thereafter through the  
26 2024 fiscal year; and no eligible company or  
27 business can be awarded more than 20% of the

1 maximum amount awarded in a single fiscal year. The  
2 grants would be claimed on a first-come,  
3 first-served basis.  
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5 A BILL  
6 TO BE ENTITLED  
7 AN ACT  
8

9 To enact the Alabama Innovation Act; to allow a  
10 research and development enhancement grant for qualified  
11 research expenses in Alabama; to provide that no more than \$8  
12 million of grants could be awarded for the 2020 fiscal year,  
13 and \$5 million each fiscal year thereafter through the 2024  
14 fiscal year, and no eligible company or business can be  
15 awarded more than 20% of the maximum amount awarded in a  
16 single fiscal year; to require that the grant only apply to  
17 research falling within certain industries; to direct the  
18 Alabama Department of Economic and Community Affairs to  
19 develop rules to administer the program; to establish the  
20 Alabama Research and Development Enhancement Fund; to provide  
21 the fund to receive appropriations from the legislature, or  
22 from the receipt of gifts, grants, or federal funds to be  
23 expended for the purpose of the program; to provide for the  
24 criteria under which grants are to be given; and to require an  
25 annual report on the progress of the program.  
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. This act shall be known as the "Alabama  
2 Innovation Act".

3           Section 2. The Legislature hereby finds and declares  
4 that the health, safety, and welfare of the people of this  
5 state are dependent upon the continued encouragement,  
6 development, growth, and expansion of the private sector  
7 within the state. The Legislature finds that expanding upon  
8 current research and development activities in the state would  
9 improve the employment opportunities, products and services  
10 available to the citizens of the state. Therefore, it is  
11 declared to be the purpose of this act to encourage new and  
12 continuing efforts to conduct research and development  
13 activities within this state.

14           Section 3. For the purpose of this act, the  
15 following words and phrases shall have the following meanings:

16           (a) ADECA. The Alabama Department of Economic and  
17 Community Affairs.

18           (b) ALABAMA RESEARCH ENTITY. One or more of the  
19 following:

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

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

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

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

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

1           a. Is exempt from federal income tax under section  
2 501(c)(3) of the Internal Revenue Code of 1986, as amended;

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

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

12          d. Has, or is anticipated to have, at least 75  
13 percent of its property and payroll in Alabama, using the  
14 property and payroll factor calculations found in Title 40.

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

17           (1) Described by NAICS Code 1133, 115111, 2121,  
18 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482,  
19 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493,  
20 511, 5121 (other than 51213), 51221, 517, 518 (without regard  
21 to the premise that data processing and related services be  
22 performed in conjunction with a third party), 51913, 52232,  
23 54133 (if predominantly in furtherance of another activity  
24 described in this article), 54134 (if predominantly in  
25 furtherance of another activity described in this article),  
26 54138, 5415, 541614, 5417, 55 (if not for the production of

1 electricity), 561422 (other than establishments that originate  
2 telephone calls), 562213, 56291, 56292, 611512, 927 or 92811.

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

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

7 a. The Accelerate Alabama Strategic Economic  
8 Development Plan adopted in January 2012 by the Alabama  
9 Economic Development Alliance, created by Executive Order  
10 Number 21 of the Governor on July 18, 2011, or any amended  
11 version or successor document thereto or

12 b. A type listed in a regulation adopted by the  
13 Department of Commerce.

14 Notwithstanding the foregoing, an approved activity  
15 shall not predominantly include farming activities involving  
16 trees, animals or crops or the retail sale of tangible  
17 personal property or services. This provision shall not be  
18 deemed to exclude customer service centers, call centers or  
19 headquarters otherwise allowed as an approved activity.

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

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

1 (1) Consortium research expenses; or

2 (2) Expenses for research activities performed  
3 outside Alabama.

4 (e) IN-HOUSE RESEARCH EXPENSES. The meaning given in  
5 26 U.S.C. § 41(b)(2), but not including wages paid or incurred  
6 to employees residing outside Alabama.

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

13 (g) QUALIFIED RESEARCH. The meaning given in 26  
14 U.S.C. § 41(d), if conducted in Alabama in pursuit of an  
15 approved activity. In applying any terms in 26 U.S.C. § 41,  
16 "qualified research" shall have the meaning given herein.

17 Section 4. (a) The Director of the ADECA is  
18 authorized to establish and administer the research and  
19 development enhancement grant program for the purpose of  
20 encouraging new and continuing efforts to conduct research and  
21 development activities within Alabama. Within 90 days of the  
22 effective date of this act, the director shall promulgate  
23 rules and policies to administer the program and begin to  
24 accept applications for grants, and shall promulgate such  
25 rules and regulations as may be necessary to meet the future  
26 needs of the grant program.

1           (b) The program shall be administered pursuant to  
2 policies developed by ADECA in compliance with this act. The  
3 policies shall provide for the awarding of grants to business  
4 enterprises that have qualified research expenses in Alabama  
5 in a taxable year exceeding a base amount, provided that the  
6 business enterprise for the same taxable year claims a  
7 research credit under Section 41 or the Internal Revenue Code  
8 of 1986, as amended.

9           (c) There is hereby created the Alabama Research and  
10 Development Enhancement Fund in the State Treasury. The fund  
11 is subject to appropriations by the legislature and gifts,  
12 grants, and other donations received by ADECA for the research  
13 and development grant program or fund. ADECA may not spend  
14 appropriations for the program for purposes other than those  
15 listed in this section. Any monies appropriated to ADECA for  
16 research and development grants that are unspent at the end of  
17 a fiscal year shall be carried over for use by the program in  
18 the next fiscal year. ADECA shall develop rules ensuring that  
19 expenses incurred to administer the program must not exceed  
20 three percent (3%) of the total amount appropriated for the  
21 program in any fiscal year. Moneys in the fund shall be  
22 invested by the State Treasurer for the sole benefit of the  
23 fund.

24           (d) Individual grants awarded by ADECA under this  
25 section may only be awarded for qualified research expenses  
26 and may not exceed the lesser of: (1) 20% of the total grant



1 funds awarded in a single fiscal year or (2) an amount equal  
2 to the sum of the following:

3 (1) 10 percent of the following:

4 a. In-house research expenses and contract research  
5 expenses for qualified research conducted in Alabama during  
6 the taxable year preceding the fiscal year for which grant  
7 funds are being awarded, minus

8 b. Fifty percent of the in-house research expenses  
9 and contract research expenses conducted in Alabama, on  
10 average, over the 3 taxable years preceding the taxable year  
11 for which the grant amount is being determined.

12 (2) 25 percent of the following:

13 a. Consortium research expenses for qualified  
14 research conducted in Alabama during the taxable year  
15 preceding the fiscal year for which grant funds are being  
16 awarded, minus

17 b. Fifty percent of the consortium research expenses  
18 conducted in Alabama, on average, over the 3 taxable years  
19 preceding the taxable year for which the grant amount is being  
20 determines.

21 Subject to such limitations, grants shall be awarded  
22 pursuant to criteria established by ADECA, with priority given  
23 to qualified research expenditures supporting an approved  
24 activity as defined in Section 3 of this act.

25 (e) The first annual commencement date to submit  
26 grant applications shall be within sixty days of the effective  
27 date of this act, and shall be March 1 in each subsequent

1 year. ADECA shall accept applications within a 150-day grant  
2 window after the annual commencement date. Applications for  
3 eligible expenses will be evaluated according to a scoring  
4 system developed by ADECA that incorporates the priorities  
5 listed in this section, with grant awards published within  
6 ninety days after expiration of the filing window.

7 Section 5. (a) There is created the Alabama Research  
8 and Development Enhancement Oversight Committee. The oversight  
9 committee shall consist of the Chair of the House Ways and  
10 Means Education Committee or designee, the Chair of the Senate  
11 Finance and Taxation Education Committee or designee, two  
12 members appointed by the Speaker of the House of  
13 Representatives, two members appointed by the President Pro  
14 Tempore of the Senate, and the Director of ADECA or his or her  
15 designee. The oversight committee shall be charged with  
16 meeting at least annually and providing general oversight of  
17 the implementation and recommending further statutory changes  
18 to promote research and development within Alabama.

19 (b) The committee shall reflect the racial, gender,  
20 geographic, urban/rural, and economic diversity of the state.

21 (c) For any year in which grants are distributed  
22 under the program, ADECA shall produce a quarterly report on  
23 the status of grants under the program to the Oversight  
24 Committee, including progress toward increased research and  
25 development activities in Alabama. The report shall also be  
26 published on ADECA's website. Within 12 months of the  
27 effective date of this act, ADECA shall produce a report on

1 the increased research and development activities supported by  
2 grant funds.

3 Section 6. The amount of research and development  
4 enhancement grants awarded by ADECA shall not exceed \$8  
5 million for the 2020 fiscal year, and \$5 million each fiscal  
6 year thereafter through the 2024 fiscal year; and no taxpayer  
7 shall receive a research and development enhancement grant of  
8 more than 20% of the maximum amount awarded in a single fiscal  
9 year. The grants shall be allocated among various taxpayers  
10 using the procedures in this section.

11 (a) Each taxpayer who wishes to apply for a grant  
12 shall file an application with the department showing the  
13 amount of tax credit which the taxpayer expects in good faith  
14 to qualify for during the applicable fiscal year. No  
15 application shall show an expected claim in excess of 20% of  
16 the maximum amount to be awarded in a single fiscal year.

17 (b) As applications are submitted, the department  
18 shall approve any the department deems sufficient, until the  
19 total approved applications represent the total available  
20 grant funds for the applicable fiscal year. All applications  
21 received on the day that the total for the applicable fiscal  
22 year is reached shall receive approval for a pro rata share of  
23 the credits available at the start of that day. To the extent  
24 that the applications are not approved, the portion not  
25 approved shall be conditionally denied by the department.  
26 Taxpayers may continue to submit applications after the total  
27 for the applicable tax year is reached, and applications that

1 the department deems sufficient shall be conditionally denied  
2 but maintained in the order received.

3 (c) If grant funds for the corresponding fiscal year  
4 are returned for any reason or if additional grant funds  
5 become available, the department shall approve, in the order  
6 they were received, the applications that were conditionally  
7 denied until the approved applications represent total of  
8 available grant funds for the applicable fiscal year and  
9 timely notify benefiting taxpayers.

10 Section 7. The grant program established under this  
11 act shall be effective for the fiscal year ending September  
12 30, 2020 and shall continue through the fiscal year ending  
13 September 30, 2024, unless extended by act of the Legislature.

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

16 Section 9. This act shall become effective  
17 immediately following its passage and approval by the  
18 Governor, or its otherwise becoming law.