HB192

209653-4

By Representative Poole

RFD: Ways and Means Education

First Read: 02-FEB-21

PFD: 01/28/2021
A BILL
TO BE ENTITLED
AN ACT

To amend Sections 40-18-375, 40-18-376, 40-18-376.3, 40-18-382, 40-18-383, 40-18-400, and 40-18-403, Code of Alabama 1975, relating to tax credits for the Alabama Jobs Act; to create a new Section 40-18-376.4, Code of Alabama 1975; to make nonsubstantive, technical revisions to update the existing code language to current style; to allow additional jobs and investment credits for underrepresented businesses and to provide definitions; to allow additional jobs credits for pharmaceutical and medical research, development, and manufacturing; to extend the investment credits to technology companies; to extend the sunset date for the Alabama Jobs Act; to increase the annual cap of Jobs Act credits; to specify the reservation of credits for projects in targeted or jumpstart counties; to provide further definitions and allowable credits for the Alabama Port Credit; to reestablish the Growing Alabama Credits; to allow a mechanism for an economic development organization to apply for funding; to allow for the credit to be taken against the state portion of the financial institution excise tax and the insurance premiums tax; to provide for an annual cap for the amount of
Growing Alabama Credits; to clarify the reservation of credits for projects in targeted or jumpstart counties; to allow the credit to be taken by owners of S corporations and other partnerships; to provide rulemaking authority; and to provide for a sunset of the Growing Alabama Credits after calendar year 2023.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:


"§40-18-375.

"(a)(1) 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.

"(2) If the incentivized company is engaged in pharmaceutical, biomedical, medical technology or medical supplies manufacturing or their related research and development activities, the incentivized company is allowed a jobs credit against utility taxes, in an annual amount equal to 4 percent of the wages paid to eligible employees during the prior year. The incentive period shall be 10 years. This would apply to companies that predominantly conduct an activity described by NAICS code 3254, 339112, or 339113, to include related research and development.
(b) The project agreement shall provide that one of the following methods shall be used to realize the benefits of the jobs credit:

(1)a. 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.

"b. 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 subdivision, 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 shall 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 Official Recompilation of the Constitution of Alabama of 1901, 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 state license taxes levied by Article 2 of Chapter 21 of Title 40 of the Code of Alabama 1975.

"(5) (6) 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 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.

"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 paragraph 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) and, for any project agreements entered into after January 1, 2021 only, state license taxes levied by Article 2 of Chapter 21 of Title 40 of the Code of Alabama 1975. In any one year, if the investment credit exceeds the amount of taxes that are allowed to be offset and that are owed by the transferee, the transferee may carry the credit forward for five years. 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 adopt rules 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 adopt rules 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 or Article 2 of Chapter 21 of Title 40 of the Code of Alabama 1975, the Department of Finance shall adopt rules to ensure that the credit in no case would reduce the distribution for the Alabama Special Mental Health Trust Fund.
§40-18-376.3.

(a)(1) This section shall be applicable to a technology company 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 three executives, and the place of residence of at least 75 percent of its employees.

(2) In making the findings required by Section 40-18-373(1), a technology company that proposes a qualifying project 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 state.

(3) A qualifying project shall be deemed to be in existence notwithstanding the requirements of Section 40-18-372 so long as at least 10 new employees are employed at the qualifying project, absent a finding of extraordinary circumstances by the Secretary of Commerce.

(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. A jobs credit against utility taxes, in an annual amount equal to 4 percent
of the wages paid to eligible employees during the prior year.
The incentive period shall be 10 years.

"(2) The jobs credit provided in Section 40-18-375(a) shall include an additional 2 percent above that otherwise allowed. An investment credit as provided in Section 40-18-376.

"(c) A "technology company" is any company which meets all the criteria in subdivision (1) or (2):

"(1) A company which earns at least 75 percent of its revenues from either 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.

"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 either of the following fields:

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

"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 the companies' development and growth.

§40-18-382.

"The incentives authorized by this article shall not be available for qualifying projects for which project agreements have not been executed on or prior to December 31, 2020 July 31, 2023, unless the Legislature, by joint resolution or other applicable action of both houses, votes enact legislation 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 article 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, 2020 July 31, 2023, 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 enact legislation continuing the incentives authorized by this article for periods after December 31, 2020 July 31, 2023, shall affect only the availability of the incentives to qualifying projects for which project agreements have not been executed on or prior to December 31, 2020 July 31, 2023, and shall not affect qualifying projects for which project agreements have been executed on or prior to December 31, 2020 July 31, 2023."
§40-18-383.

"(a) At no time prior to the calendar year ending December 31, 2020, shall the annualized balance of outstanding jobs act incentives exceed $300 million, which amount would increase to three hundred twenty-five million dollars ($325,000,000) for the calendar year ending December 31, 2021 and three hundred fifty million dollars ($350,000,000) for the calendar year ending December 31, 2022, unless the Legislature, by joint resolution or other applicable action of both houses, votes to enact legislation to allow additional jobs act incentives. Of the above annualized balance, twenty million dollars ($20,000,000) shall apply to qualifying projects located in targeted or jumpstart counties as described in Section 40-18-376.1.

"(b) Jobs act incentives shall not be available to any project for which substantial construction activities have begun by July 2, 2015.

"(c) Jobs act incentives under this article shall not be available for any qualifying project unless at least 80 percent of the eligible employees created by the qualifying project are employed full time.

§40-18-400.

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

"(1) BASE CARGO VOLUME. The greater of the following:
"a. One hundred five percent of the cargo volume of a port facility user in the 12-month period immediately preceding the application.

"b. Ten TEUs, for cargo measured by TEU, or 75 net tons, for cargo measured by net ton, or 400 VEUs for cargo measured by VEU.

"(2) CARGO VOLUME. The total amount of noncontainerized general cargo or containers, measured in TEUs, in net tons, or in kilograms, or in VEUs transported by way of a waterborne ship, air cargo aircraft, or railroad through a port facility; provided that such cargo shall be owned by the port facility user at the time the port facility is used.

"(3) COMMISSION. The Renewal of Alabama Commission created by Section 40-18-402.

"(4) COMPANY. Anyone or anything which has the powers to conduct the activities required to claim the port credit.

"(5) INLAND PORTS. Physical sites located away from traditional land, air, and coastal borders with the vision to facilitate and process international and domestic trade through strategic investment in multi-modal transportation assets and by promoting value-added services as goods move through the supply chain.

"(6) PORT FACILITY. Any publicly owned type of deep draft ship terminal facility located within this state's ports of entry, including publicly owned inland ports, through which
cargo is transported by way of a waterborne ship, air cargo aircraft, or railroad, to or from destinations inside or outside this state and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

"(7) PORT CREDIT. The credit provided for in Section 40-18-403.

"(8) PORT FACILITY USER. A company engaged in manufacturing, warehousing, or distribution which uses a port facility.

"(9) TEU. A "20-foot equivalent unit" volumetric measure based on the size of a container 20 feet long by eight feet wide by eight feet, six inches high.

"(10) VEHICLE. Any motorized vehicle as defined in Section 32-1-1.1.

"(11) VEU. A "Vehicle Equivalent Unit" volumetric measure of one (1) cubic meter.

"$40-18-403.

"(a) If approved by the commission, a port credit is allowed, in an amount equal to fifty dollars ($50) per TEU, three dollars ($3) per net ton, or four cents ($0.04) per kilogram for air freight, or two dollars and ninety-one cents ($2.91) per VEU, multiplied by the following:

"(1) The port user's cargo volume in the 12-month period for which the commission has granted approval for the port user to claim the port credit, minus

"(2) The port user's base cargo volume.
"(b) The commission shall decrease the amount of the port credit to ensure that the anticipated revenues for the port facility and state will exceed the amount of the port credit sought. The port credit may be conditioned on whatever requirements the commission shall impose. The port credits shall only be available to the extent that a port facility user ships more than 105 percent of its cargo volume from the 12-month period immediately preceding the port facility user's application. Moreover, the port credit shall only be available to the extent a port facility user ships more than 10 TEUs, for cargo measured by TEU, more than 75 net tons, for cargo measured by net ton, or more than fifteen thousand (15,000) kilograms for air cargo measured by kilograms, or more than 400 VEU, for cargo measured by VEU.

"(c) The following methods may be used to realize the port credit:

"(1) The port credit may offset the tax levied by this chapter, but not below zero. The port credit may also offset the estimated payments of the tax levied by this chapter, but not below zero. In no event shall the port credits be allowed to reduce any estimated payment of the tax levied by this chapter before October 1, 2016. In any one year, if the port credit exceeds the amount of tax liability, the port user may carry forward the unused port credit. No carryforward shall be allowed for more than five years. Rules similar to those used for Section 40-18-15.2 shall be applied.
(2) A company may assign and convey a port credit to another company if substantially all of the assets of the company are assigned and conveyed in the same transaction. Proof of such transfer shall be submitted to the Department of Revenue.

(d) To the extent that the port credit is utilized by the port user or by a transferee company, no deduction for the related expenses shall be allowed.

(e) For any company which enters into an economic development project agreement with the state, the project agreement may provide for an allocation to the company of any port credits which have not been allocated pursuant to this article. Allocations made pursuant to this subsection shall meet all of the following requirements:

(1) Allocations shall be made by the Governor and approved by the commission.

(2) Allocations for a project shall not exceed three million dollars ($3,000,000).

(3) Allocations shall be granted only to a new warehouse or distribution facility which commits to investing at least twenty million dollars ($20,000,000) at a single site and to creating 75 net new jobs in Alabama.

(4) Port credits may not be used until the Department of Commerce has received satisfactory proof that the capital investment and job creation requirements have been satisfied.
"(5) Any port credit granted by this procedure shall not be granted for more than a 3-year period.

"(6) Allocations shall not exceed one hundred dollars ($100) per TEU, three dollars ($3) per net ton, or four cents ($0.04) per kilogram for air freight, or two dollars and ninety one cents ($2.91) per VEU.

"(7) Anticipated revenues for the state shall exceed the port credit granted, and the project agreement shall provide for recapture of all or part of the port credit should the company default on its obligations in the project agreement."

Section 2. Sections 3 through 9 shall be known and may be cited as the Growing Alabama Act.

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

(1) ACCELERATOR. 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 the companies’ development and growth.

(2) CAPITAL IMPROVEMENTS. Construction and rehabilitation expenses of a capital nature at an inland port or intermodal facility, the dredging of waterways in the immediate vicinity of an inland port, and the expansion of onsite storage facilities at an inland port or intermodal facility.
(3) ECONOMIC DEVELOPMENT ACTIVITIES. Activities and initiatives which enhance the use of, and flow of goods through, an inland port or intermodal facility.

(4) ECONOMIC DEVELOPMENT ORGANIZATION. A local economic development organization or a state economic development organization.

(5) GROWING ALABAMA CREDIT. The credit provided for in subsection (a) of Section 6.

(6) INDUSTRY OR BUSINESS. An entity which would conduct at a site an activity that is primarily described in Section 40-18-372(1), Code of Alabama 1975.

(7) INLAND PORT. Any port on a navigable river away from traditional land, air, and coastal borders.

(8) INTERMODAL FACILITY. Any facility which interconnects two or more different modes of air, rail, or road traffic serving multiple customers, and which involves storage facilities.

(9) 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.

(10) RENEWAL OF ALABAMA COMMISSION. The Renewal of
Alabama Commission created by Section 40-18-402, Code of
Alabama 1975.

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

(12) 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 and has a record of supporting or otherwise
participating in economic development activities in the state.

Section 4. (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 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.

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.

d. Capital improvements or economic development activities at an inland port or intermodal facility, as described in Section 3; provided that the application is accompanied by an economic impact report on such improvements or activities.

e. Any site improvement or public infrastructure work in census tracts that meet the definition of low-income communities found in 26 U.S.C. 45D(e).

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

a. The creation, operation, or support of an accelerator for technology companies, provided that the application is accompanied by an economic impact report. Technology companies shall include companies which earn or reasonably expect to earn at least 75% of their revenues from sources described in Section 40-18-376.3(c)(1).

b. The construction, maintenance, promotion, operation, management, leasing, and subleasing of an agricultural center which includes a multi-use facility and
related commercial and noncommercial 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 thirty-five million dollars ($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 one hundred million dollars ($100,000,000); provided that the application is accompanied by an economic impact report on the agricultural center.

c. The creation, operation, or support of programs designed to provide funding or other resources for businesses which are described in Section 40-18-376.4(c).

(b) For any site preparation or public infrastructure work provided in subdivision (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 paragraph (a)(1) a. or b. 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 paragraph (a)(1) a. or b.

(d) The application provided in subsection (a) shall include proof that the 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 economic development organization that the submission of the application did not violate the conflict of interest policy referred to in subsection (d).

Section 5. (a) Following a review, if the Department of Commerce should approve the application provided in subsection (a) of Section 4, 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 improvements at industrial sites, the commission shall give preference to sites with at least 1,000 acres of available space. 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, Code of Alabama 1975. 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 economic development organization is allowed to receive so that it can complete the work specified in the application.

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

(1) Require the 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 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 subdivision (a)(1), of Section 4, 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 related to inland ports or
intermodal facilities as described in paragraph (a)(1) d. of
Section 4 or a project related to a technology company or
agricultural center as described in subdivision (a)(2) of
Section 4, the report shall include an economic impact report.

(3) Require the 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.

Section 6. (a) A taxpayer is allowed a Growing
Alabama Credit to be applied against all of the following:

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

(2) To offset the state portion of the financial
institution excise tax levied in Chapter 16 of Title 40 of the

(3) To offset the insurance premium tax levied by
subsection (a) of Section 27-4A-3, Code of Alabama 1975.

(4) To offset state license taxes levied by Article
(b) In no event shall the Growing Alabama Credit cause a taxpayer's tax liability to be reduced by more than 50 percent. Unused credits may be carried forward for no more than five years.

(c) 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 an economic development organization which was approved by the Renewal of Alabama Commission, as provided in Section 5. The online system shall ensure that credits are not granted for contributions to an economic development organization in excess of the amounts approved by the Renewal of Alabama Commission, as provided in Section 5.

(d) The cumulative amount of funding approved pursuant to this section shall not exceed twenty million dollars ($20,000,000) in a calendar year. Of that amount, no more than four million dollars ($4,000,000) of funding in the aggregate may be approved for accelerator programs as described in Section 40-18-376.3 (c)(2), Code of Alabama 1975.

(e) The Renewal of Alabama Commission shall reserve at least 25 percent of the amounts specified in subsection (c) for projects located in targeted or jumpstart counties as defined in Section 40-18-376.1, Code of Alabama 1975. In the event applications are not received and credits are not allocated for projects in these areas by the close of the
second quarter of the program year, the funds may revert for allocations of other project applications.

(f) 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. For purposes of this section, an individual taxpayer includes an individual who is a shareholder of an Alabama S corporation or a partner or member of a Subchapter K entity that made a contribution to an economic development organization which was approved by the Renewal of Alabama Commission.

(g) The Department of Finance shall adopt rules to ensure that the Growing Alabama Credit in no case would reduce the distribution for the Alabama Special Mental Health Trust Fund by using any unencumbered funds.

Section 7. (a) Upon receipt of funding provided by the tax credit process in Section 6, the economic development organization shall proceed with the work that was specified in the application required by Section 4.

(b)(1) As to a project described in subdivision (a)(1) of Section 4, 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 subdivision (a)(2) of Section 4, the economic development organization shall report to the Department of Commerce upon the completion of the work and at such 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 act 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, Code of Alabama 1975, at the times, and in the manner, requested by the committee.

Section 8. (a) All filings and applications made 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.

(b) Nothing in this act 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.

(c) Nothing in this act shall be construed to make available to any taxpayer any right to the benefits conferred by this act absent strict compliance with this act.
(d) Nothing in this act shall be construed to limit the powers otherwise existing for the Department of Revenue to audit and assess a taxpayer claiming the Growing Alabama Credit.

(e) Nothing in this act shall be construed to change or lessen the requirements for claiming jobs act incentives under the Alabama Jobs Act in Article 16 of Chapter 18 of Title 40 of the Code of Alabama 1975. Companies claiming the jobs act incentives must strictly comply with Article 16 of Chapter 18 of Title 40 of the Code of Alabama 1975.

(f) The Department of Commerce and Department of Revenue are authorized to adopt rules as necessary to implement and administer this act.

Section 9. The Growing Alabama Credits provided in this act shall not be available for qualifying applicants as described in this act, for which applications are not approved on or prior to July 31, 2023, unless the Legislature enacts legislation to extend the date. This shall only affect the availability of credits for applications not approved on or prior to July 31, 2023, and shall not cause a reduction or suspension of any credits awarded on or prior to July 31, 2023.

Section 10. A new section 40-18-376.4 is added to Article 16, Chapter 18 of Title 40, Code of Alabama 1975, to read as follows:

§40-18-376.4.
(a) This section shall be applicable to an underrepresented company, as defined herein. In making the findings required by Section 40-18-373(1), an underrepresented company that proposes a qualifying project 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 economic diversity and will benefit the state.

(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) Absent a finding of extraordinary circumstances by the Secretary of Commerce, a qualifying project shall be deemed to be in existence notwithstanding the requirements of Section 40-18-372 so long as 10 new jobs are created.

(2) A jobs credit against utility taxes, in an annual amount equal to 4 percent of the wages paid to eligible employees during the prior year.

(3) The investment credit provided in Section 40-18-376(a) shall have an incentive period of 15 years.

(c) An “underrepresented company” is any company which meets all the criteria in the following paragraph (1) or (2):

(1) The company is a for-profit business headquartered in a community eligible for investment through the federal New Markets Tax Credit program under 26 USC 45D(e), has fewer than 10 employees at the time the project
agreement is executed, and has average gross revenues of less than $500,000 in the company’s three years prior to the execution of the project agreement; or

(2) The company is a for-profit business that is independently owned and controlled and is at least 51 percent owned and controlled by one or more underrepresented persons or, in the case of a publicly-owned business, the company is a for-profit business of which at least 51 percent of the stock is owned and controlled by one or more underrepresented persons and whose daily management and operations are under the control of one or more underrepresented persons. As used herein, an underrepresented person is a United States citizen who is a woman, or an African American.

Section 11. Any action taken prior to the effective date of this act by the Governor by proclamation or otherwise or any action taken by any agency or department to extend benefits or credits under the Alabama Jobs Act or the Growing Alabama Act is hereby ratified and confirmed.

Section 12. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 13. This act shall become effective immediately upon its passage and approval by the Governor, or its otherwise becoming law.
Read for the first time and referred to the House of Representatives committee on Ways and Means Education........................................... 02-FEB-21

Reported from Ways and Means Education as ........................................... 03-FEB-21

Read for the third time and passed as amended........................................... 04-FEB-21

Yeas 94, Nays 1, Abstains 0

Jeff Woodard
Clerk