

1 SB271
2 136243-1
3 By Senators Williams, Bussman, Taylor, Marsh, Allen, Beason,
4 Waggoner, Ward, Reed, Scofield and Dial
5 RFD: Job Creation and Economic Development
6 First Read: 09-FEB-12

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8 SYNOPSIS: This bill would make Legislative findings
9 regarding the use of economic incentives provided
10 to companies that undertake projects in the state
11 that create and retain jobs. This bill would allow
12 the State of Alabama to conduct public revenue
13 estimates and subsequently allow new and existing
14 companies which undertake certain qualifying
15 projects in Alabama to retain a percentage of state
16 income taxes withheld from eligible employees.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

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22 To provide legislative findings; to provide
23 definitions; to allow Alabama companies which undertake
24 certain qualifying projects to retain a percentage of state
25 income taxes withheld from eligible employees.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the Alabama Job Creation and Retention Act of 2012.

3 Section 2. The Legislature makes the following
4 findings:

5 (a) The economic well-being of the citizens of the
6 state will be enhanced by the increased development and growth
7 of industry within the state and it is in the best interests
8 of the state to provide for certain incentives to allow the
9 state to promote such economic development through the
10 recruitment, retention, and expansion of quality projects
11 within the state.

12 (b) The incentives provided in this act will assist
13 the state in encouraging the retention of existing jobs that
14 may otherwise be terminated or displaced, and the creation of
15 new jobs which may not otherwise exist within the state, and
16 the incentives will help retain and create sources of tax
17 revenues for the state and its political subdivisions.

18 (c) The Alabama Development Office and the
19 Department of Revenue shall implement this act and exercise
20 all powers as authorized in this act; however, the application
21 of this act or the offering of any of its incentives as to any
22 particular approved company shall be in the sole discretion of
23 the Governor upon the written recommendation of the ADO
24 Director and the Director of Finance.

25 (d) The powers to be granted and the purposes to be
26 accomplished by this act are proper governmental and public

1 purposes and the inducement of the recruitment, retention, or
2 expansion of quality projects within the state is of paramount
3 importance.

4 (e) Nothing in this act shall be construed to
5 constitute a guarantee or assumption by the state of any debt
6 of any individual, company, corporation, or association nor to
7 authorize the credit of the state to be given, pledged, or
8 loaned to any individual, company, corporation, or
9 association.

10 (f) Nothing in this act gives any approved company
11 any right to the incentives authorized by this act unless the
12 incentives are approved by the Governor pursuant to this act.

13 (g) This act is intended to be revenue-neutral with
14 regard to employee withholdings and potential refunds.

15 Section 3. The following words and phrases shall
16 have the following meanings:

17 (1) ADO. The Alabama Development Office.

18 (2) APPROVED COMPANY. Any company recommended by the
19 ADO Director and the Director of Finance in writing and
20 approved by the Governor in writing pursuant to this act which
21 undertakes a qualifying project.

22 (3) CAPITAL COSTS. All costs and expenses incurred
23 by an approved company in connection with the acquisition,
24 construction, installation, and equipping of a qualifying
25 project during the period commencing with the date on which
26 such acquisition, construction, installation, and equipping

1 commences and ending on the date on which the qualifying
2 project is placed in service, including, without limitation,
3 all of the following:

4 a. The costs of acquiring, constructing, installing,
5 and equipping a qualifying project, including all obligations
6 incurred for labor and to contractors, subcontractors,
7 builders, and materialmen.

8 b. The costs of acquiring land or rights in land.

9 c. The costs of architectural and engineering
10 services, including test borings, surveys, estimates, plans
11 and specifications, preliminary investigations, environmental
12 mitigation, and supervision of construction, as well as for
13 the performance of all the duties required by or consequent
14 upon the acquisition, construction, and installation of a
15 qualifying project.

16 d. The costs associated with installation of
17 fixtures and equipment; surveys, including archaeological and
18 environmental surveys; site tests and inspections; subsurface
19 site work; excavation; removal of structures, roadways,
20 cemeteries, and other surface obstructions; filling, grading,
21 paving and provisions for drainage, storm water retention,
22 installation of utilities, including water, sewer, sewage
23 treatment, gas, electricity, communications, and similar
24 facilities; and off-site construction of utility extensions to
25 the boundaries of the property.

1 e. All other costs of a nature comparable to those
2 described.

3 f. Costs otherwise defined as capital costs that are
4 incurred by the approved company where the approved company is
5 the lessee under a lease that: 1. has a term of not less than
6 five years, and 2. is characterized as a capital lease for
7 federal income tax purposes; provided, that if the project is
8 a headquarters facility with a lease term of not less than
9 five years, a research and development facility with a lease
10 term of not less than 10 years, or a project at which the
11 predominant trade or business activity conducted is described
12 in the 2007 North American Industry Classification System,
13 promulgated by the Executive Office of the President of the
14 United States, Office of Management and Budget, Sectors 31
15 (other than National Industry 311811), 32, and 33 with a lease
16 term of not less than 10 years, the lease may be characterized
17 as an operating lease for federal income tax purposes in which
18 event capital costs shall include the net present value of the
19 payments made by the approved company under the lease computed
20 using the applicable federal rate for the month in which the
21 qualifying project is placed in service and for the term most
22 closely approximating the term of the lease. Capital costs
23 shall not include property owned or leased by the approved
24 company or a related company before the commencement of the
25 acquisition, construction, installation, or equipping of the
26 qualifying project unless such property was physically located

1 outside the state for a period of at least one year prior to
2 the date on which the qualifying project was placed in
3 service.

4 g. Costs either paid or incurred by 1. a public
5 entity for the benefit of a qualifying project where such
6 costs are treated as costs paid by an approved company with
7 respect to the qualifying project for federal income tax
8 purposes, such costs shall not include amounts contributed by
9 a public entity to a qualifying project as a capital
10 contribution or gift except to the extent that an approved
11 company has cost basis in the contribution or gift for federal
12 income tax purposes; or 2. a related company to an approved
13 company to the extent such costs are included in or taken into
14 account in determining the approved company's capital
15 expenditures in the qualifying project, whether or not
16 incurred by an approved company.

17 (4) COMPANY. Any corporation, partnership, limited
18 liability company, proprietorship, trust, or other business
19 entity, regardless of form.

20 (5) DATA PROCESSING CENTER. An establishment engaged
21 predominantly in the provision of complete processing and
22 specialized reports from data, the provision of automated data
23 processing and data entry services, the provision of an
24 infrastructure for hosting of data processing services, the
25 provision of specialized hosting activities, the provision of
26 application service provisioning, the provision of general

1 time-share mainframe facilities, or some combination of the
2 foregoing.

3 (6) ELIGIBLE EMPLOYEES. Those persons, as set forth
4 in a qualifying project agreement, a. who are being paid
5 directly by an approved company for working at a qualifying
6 project for not less than 36 hours per work week, whose
7 workday is fully dedicated to the qualifying project, b. who
8 the approved company identifies as its employees to the U.S.
9 Internal Revenue Service, the Department of Revenue, or the
10 Department of Industrial Relations on returns or reports filed
11 with the foregoing, including, but not limited to, IRS Form
12 941, and c. who are eligible to participate under such benefit
13 plans as are generally applicable to employees holding
14 positions of like kind and character within either the
15 approved company or a related company whose employee benefits
16 are equivalent to or better than, from an employee
17 perspective, the approved company's employee benefits.

18 (7) FAVORED GEOGRAPHIC AREA. The definition in
19 Section 40-18-190, Code of Alabama 1975.

20 (8) HEADQUARTERS FACILITY. Any trade or business
21 described in the 2007 North American Industry Classification
22 System, promulgated by the Executive Office of the President
23 of the United States, Office of Management and Budget,
24 National Industry 551114.

1 (9) INCENTIVE PERIOD. The time period set forth in a
2 qualifying project agreement for which an approved company may
3 receive withholding incentives.

4 (10) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.
5 Any trade or business described in the 2007 North American
6 Industry Classification System, promulgated by the Executive
7 Office of the President of the United States, Office of
8 Management and Budget, Sectors 31 (other than National
9 Industry 311811), 32, and 33; Subsectors 423, 424, 493, 511,
10 and 927; Industry Groups 5417, 5415, and 5182 (without regard
11 to the premise that data processing and related services be
12 performed in conjunction with a third party); Industries 11331
13 and 48691; and National Industries 115111, 517110, 541380, and
14 561422 (other than establishments that originate telephone
15 calls) and includes such trades and businesses as may be
16 hereafter added by an act of the Legislature, reclassified in
17 any subsequent publication of the North American Industry
18 Classification System or other industry classification system
19 developed in conjunction with the United States Department of
20 Commerce, or any process or treatment facility which recycles,
21 reclaims, or converts materials, which include solids,
22 liquids, or gases, to a reusable product.

23 (11) NEW OR EXPANSION PROJECT. A project meeting any
24 one of the following requirements:

1 a. A headquarters facility at which the predominant
2 trade or business activity conducted will not be the
3 production of electricity.

4 b. A data processing center.

5 c. A research and development facility.

6 d. A project at which the predominant trade or
7 business activity conducted will constitute industrial,
8 warehousing, or research activity or any other business
9 activity defined in Section 40-18-190, Code of Alabama 1975,
10 without regard to whether the minimum capital costs
11 requirement set forth for the activity is satisfied.

12 (12) PROJECT. Any land, building, or other
13 improvement, and all real and personal properties deemed
14 necessary or useful in connection therewith, whether or not
15 previously in existence, located or to be located in the
16 state.

17 (13) PUBLIC ENTITY. A public industrial development
18 board or authority, municipality, or county, or other public
19 corporation or political subdivision.

20 (14) QUALIFYING PROJECT. Any new or expansion
21 project or retention project to be undertaken by an approved
22 company. Any proposed qualifying project shall be
23 characterized, in the sole discretion of the Governor upon the
24 written recommendation of the ADO Director and the Director of
25 Finance, as either a new or expansion project or a retention
26 project. In making this characterization, the Governor may

1 consider any criteria which he or she considers to be
2 appropriate.

3 (15) QUALIFYING PROJECT AGREEMENT. An executed
4 agreement entered into between the state and an approved
5 company that describes the qualifying project and sets forth
6 the withholding incentives, the incentive period, the number
7 of eligible employees, any termination provisions or
8 provisions which allow the state to recapture withholding
9 incentives in the event the approved company fails to meet
10 certain minimum job or capital investment requirements, or
11 both, and any other terms and conditions which the state, in
12 its sole discretion, may require for an approved company to
13 qualify for and receive withholding incentives.

14 (16) RELATED COMPANY. Any company that is under
15 common management or control with an approved company.

16 (17) RESEARCH AND DEVELOPMENT FACILITY. An
17 establishment engaged predominantly in conducting original
18 investigations undertaken on a systematic basis to gain new
19 knowledge or applying research findings or other scientific
20 knowledge to create new or significantly improved products or
21 processes, or both.

22 (18) RETENTION PROJECT. A project, to be used as
23 part of an existing facility of a company located in the
24 state, meeting both of the following requirements:

25 a. The project is described in paragraphs a. through
26 d. of subdivision (11).

1 b. The capital costs of the project are not less
2 than the following:

3 1. Two million dollars (\$2,000,000), if the project
4 is not located in a favored geographic area.

5 2. Five hundred thousand dollars (\$500,000), if the
6 project is located in a favored geographic area.

7 (19) WITHHOLDING INCENTIVES. Incentives in the form
8 of the retention by an approved company of a percentage of
9 state income taxes withheld from eligible employees.

10 Section 4. (a) The ADO Director and the Director of
11 Finance shall determine, upon initial application on a form
12 approved by the ADO and the Department of Finance, whether to
13 recommend to the Governor, in writing, that a company be
14 approved as an approved company. In making their
15 determination, the ADO Director and the Director of Finance
16 may consider any criteria which they consider, in their sole
17 discretion, to be appropriate. The ADO Director and the
18 Director of Finance, in making their determination, shall
19 conduct a public revenue estimate with respect to a proposed
20 qualifying project and the withholding incentives proposed to
21 be granted by the Governor with respect thereto.

22 (b) After reviewing the recommendation of the ADO
23 Director and the Director of Finance, the Governor, in his or
24 her sole discretion, shall determine whether to approve, in
25 writing, a company as an approved company. In making his or
26 her determination, the Governor shall consider whether

1 approving a company as an approved company serves a valid
2 public purpose and is in the best interests of the citizens of
3 the state.

4 (c) After the Governor approves a company as an
5 approved company, the approved company must enter into a
6 qualifying project agreement with the state in order to
7 qualify for and receive withholding incentives. The state, in
8 its sole discretion, may require that an approved company meet
9 minimum job or capital investment requirements, or both, to
10 avoid the state recapturing withholding incentives or
11 terminating the qualifying project agreement.

12 Section 5. (a) An approved company that meets the
13 qualifications specified in this act shall qualify to receive
14 withholding incentives in an amount equal to:

15 (1) In the case of a new or expansion project, one
16 percent to 90 percent of the amount of state income taxes
17 withheld from eligible employees.

18 (2) In the case of a retention project, one percent
19 to 75 percent of the amount of state income taxes withheld
20 from eligible employees.

21 (b) The incentive period shall be determined in the
22 sole discretion of the Governor upon written recommendations
23 by the ADO Director and the Director of Finance, except that
24 in no event shall the incentive period exceed 20 years after a
25 qualifying project is placed in service.

1 (c) Withholding incentives shall be reduced or
2 eliminated with respect to a qualifying project at the time
3 the sum of all withholding incentives received with respect to
4 such qualifying project equals 100 percent of the capital
5 costs of such qualifying project, all to the end that the
6 aggregate amount of withholding incentives shall not exceed
7 100 percent of the capital costs of the qualifying project.

8 (d) An eligible employee is allowed a credit against
9 his or her state income taxes in an amount equal to 100
10 percent of the withholding incentives retained by an approved
11 company from his or her wages during the tax year.

12 (e) An approved company which enters into a
13 qualifying project agreement for withholding incentives with
14 the state may not claim the capital credit provided in Article
15 7, Chapter 18 of Title 40, Code of Alabama 1975, with respect
16 to such qualifying project.

17 Section 6. (a) Within 90 days after the end of a
18 calendar quarter for which an approved company has qualified
19 to receive a withholding incentive, the approved company shall
20 certify to the Department of Revenue, on a form approved by
21 the Department of Revenue, the actual number of eligible
22 employees for the calendar quarter, the payroll of eligible
23 employees for the calendar quarter, and any other information
24 required by the qualifying project agreement. The Department
25 of Industrial Relations shall verify the actual number of
26 eligible employees employed at the qualifying project during

1 the relevant calendar quarter. If the Department of Industrial
2 Relations is not able to provide such verification utilizing
3 all available resources, the Department of Revenue may request
4 such additional information from the approved company as may
5 be necessary. The Department of Revenue may audit any approved
6 company periodically to monitor compliance by the approved
7 company with this act.

8 (b) An approved company may receive withholding
9 incentives only in accordance with a qualifying project
10 agreement. If an approved company that is receiving
11 withholding incentives expands a qualifying project, it may
12 apply to the ADO and the Department of Revenue for additional
13 withholding incentives based on the new eligible employees.

14 Section 7. The ADO, the Department of Revenue, and
15 the Department of Finance, with the assistance of other
16 agencies, may adopt rules, in accordance with the
17 Administrative Procedure Act, and application forms and other
18 forms necessary to implement their respective duties and
19 responsibilities under this act.

20 Section 8. If a court of competent jurisdiction
21 adjudges invalid or unconstitutional any clause, sentence,
22 paragraph, section or part of this act, such judgment or
23 decree shall not affect, impair, invalidate, or nullify the
24 remainder of this act, but the effect of the decision shall be
25 confined to the clause, sentence, paragraph, section, or part
26 of this act adjudged to be invalid or unconstitutional.

1 Section 9. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 10. This act shall become effective
4 immediately following its passage and approval by the Governor
5 or its otherwise becoming law, and ratification by the people
6 of Alabama of the constitutional amendment proposed by House
7 Bill ____ or Senate Bill ____ [Act No. 2012-____] of the
8 Regular Session of 2012 of the Alabama Legislature. In the
9 event that the constitutional amendment proposed by House Bill
10 ____ or Senate Bill ____ [Act No. 2012-____] of the Regular
11 Session of 2012 of the Alabama Legislature is not ratified by
12 the people of Alabama, then this act shall be null and void.