

1 SB511  
2 140922-1  
3 By Senator Holley  
4 RFD: Job Creation and Economic Development  
5 First Read: 12-APR-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 jobs. This bill would allow Alabama  
12 companies which undertake certain qualifying  
13 projects a tax incentive based upon jobs created  
14 and wages paid to new employees.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT

19  
20 To provide legislative findings; to provide  
21 definitions; to allow Alabama companies which undertake  
22 certain qualifying projects a tax incentive based upon a per  
23 job created and wage formula.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1                   Section 2. The Legislature makes the following  
2 findings:

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

10                   (b) The incentives provided in this act will assist  
11 the state in encouraging the creation of new jobs, which may  
12 not otherwise exist within the state, and the incentives will  
13 help create sources of tax revenues for the state and its  
14 political subdivisions.

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

22                   (d) The powers to be granted and the purposes to be  
23 accomplished by this act are proper governmental and public  
24 purposes and the inducement of the recruitment, or expansion  
25 of quality projects within the state is of paramount  
26 importance.

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

7           (f) Nothing in this act gives any approved company  
8           any right to the incentives authorized by this act unless the  
9           incentives are approved by the Governor pursuant to this act.

10          (g) This act is intended to be revenue-positive with  
11          regard to incentives granted based upon job creation and wage  
12          formulas.

13          Section 3. The following words and phrases shall  
14          have the following meanings:

15               (1) ADO. The Alabama Development Office.

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

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

1 project is placed in service, including, without limitation,  
2 all of the following:

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

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

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

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

25 e. All other costs of a nature comparable to those  
26 described, provided that all other costs not specifically

1 provided in this act are included and pre-approved as capital  
2 costs in the project agreement.

3 f. Provided the costs are included and pre-approved  
4 as capital costs in the project agreement, costs otherwise  
5 defined as capital costs that are incurred by the approved  
6 company where the approved company is the lessee under a lease  
7 that:

8 1. has a term of not less than five years, and

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

1 company or a related company before the commencement of the  
2 acquisition, construction, installation, or equipping of the  
3 qualifying project unless such property was physically located  
4 outside the state for a period of at least one year prior to  
5 the date on which the qualifying project was placed in  
6 service.

7 g. Costs either paid or incurred by

8 1. a public entity for the benefit of a qualifying  
9 project where such costs are treated as costs paid by an  
10 approved company with respect to the qualifying project for  
11 federal income tax purposes, such costs shall not include  
12 amounts contributed by a public entity to a qualifying project  
13 as a capital contribution or gift except to the extent that an  
14 approved company has cost basis in the contribution or gift  
15 for federal income tax purposes; or

16 2. a related company to an approved company to the  
17 extent such costs are included in or taken into account in  
18 determining the approved company's capital expenditures in the  
19 qualifying project, whether or not incurred by an approved  
20 company.

21 (4) COMPANY. Any corporation, partnership, limited  
22 liability company, proprietorship, trust, or other business  
23 entity, regardless of form.

24 (5) DATA PROCESSING CENTER. An establishment engaged  
25 predominantly in the provision of complete processing and  
26 specialized reports from data, the provision of automated data

1 processing and data entry services, the provision of an  
2 infrastructure for hosting of data processing services, the  
3 provision of specialized hosting activities, the provision of  
4 application service provisioning, the provision of general  
5 time-share mainframe facilities, or some combination of the  
6 foregoing.

7 (6) ELIGIBLE EMPLOYEES. Those persons, as set forth  
8 in a qualifying project agreement,

9 a. who are being paid directly by an approved  
10 company for working at a qualifying project for not less than  
11 36 hours per work week, whose workday is fully dedicated to  
12 the qualifying project,

13 b. who the approved company identifies as its  
14 employees to the U.S. Internal Revenue Service, the Department  
15 of Revenue, or the Department of Industrial Relations on  
16 returns or reports filed with the foregoing, including, but  
17 not limited to, IRS Form 941,

18 c. who are eligible to participate under such  
19 benefit plans as are generally applicable to employees holding  
20 positions of like kind and character within either the  
21 approved company or a related company whose employee benefits  
22 are equivalent to or better than, from an employee  
23 perspective, the approved company's employee benefits, and

24 d. with respect to the wage and job creation  
25 incentives provided in this act, a new employee when hired  
26 must be considered to have been unemployed in the State of



1 Alabama for a period of not less than 6 months according to  
2 the Alabama Department of Industrial Relations, and must be  
3 employed by the qualifying project for at least 12 consecutive  
4 months before the company is eligible for the wage and job  
5 creation incentives.

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

8 (8) HEADQUARTERS FACILITY. Any trade or business  
9 described in the 2007 North American Industry Classification  
10 System, promulgated by the Executive Office of the President  
11 of the United States, Office of Management and Budget,  
12 National Industry 551114.

13 (9) INCENTIVE PERIOD. The time period set forth in a  
14 qualifying project agreement for which an approved company may  
15 receive incentives, but in no event shall the incentives be  
16 extended past 10 years.

17 (10) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.  
18 Any trade or business described in the 2007 North American  
19 Industry Classification System, promulgated by the Executive  
20 Office of the President of the United States, Office of  
21 Management and Budget, Sectors 31 (other than National  
22 Industry 311811), 32, and 33; Subsectors 423, 424, 493, 511,  
23 and 927; Industry Groups 5417, 5415, and 5182 (without regard  
24 to the premise that data processing and related services be  
25 performed in conjunction with a third party); Industries 11331  
26 and 48691; and National Industries 115111, 517110, 541380, and

1 561422 (other than establishments that originate telephone  
2 calls) and includes such trades and businesses as may be  
3 hereafter added by an act of the Legislature, reclassified in  
4 any subsequent publication of the North American Industry  
5 Classification System or other industry classification system  
6 developed in conjunction with the United States Department of  
7 Commerce, or any process or treatment facility which recycles,  
8 reclaims, or converts materials, which include solids,  
9 liquids, or gases, to a reusable product.

10 (11) NEW OR EXPANSION PROJECT. A new or expansion  
11 project meeting any one of the following requirements:

12 a. A headquarters facility at which the predominant  
13 trade or business activity conducted will not be the  
14 production of electricity.

15 b. A data processing center.

16 c. A research and development facility.

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

23 e. A project that creates 250 or more new eligible  
24 employees in the state paying a wage rate above 15% of the  
25 average state wage, regardless of the business activity or  
26 approved industrial code classification.

1           (12) PROJECT. Any land, building, or other  
2 improvement, and all real and personal properties deemed  
3 necessary or useful in connection therewith, whether or not  
4 previously in existence, located or to be located in the  
5 state.

6           (13) PUBLIC ENTITY. A public industrial development  
7 board or authority, municipality, or county, or other public  
8 corporation or political subdivision.

9           (14) QUALIFYING PROJECT. Any new or expansion  
10 project to be undertaken by an approved company. Any proposed  
11 qualifying project shall be characterized, in the sole  
12 discretion of the Governor upon the written recommendation of  
13 the ADO Director and the Director of Finance, as either a new  
14 or expansion project. In making this characterization, the  
15 Governor may consider any criteria which he or she considers  
16 to be appropriate, but shall include an independent cost  
17 benefit analysis of the project which provides that the  
18 project will be at least revenue positive to the Education  
19 Trust Fund.

20           (15) QUALIFYING PROJECT AGREEMENT. An executed  
21 agreement entered into between the state and an approved  
22 company that describes the qualifying project and sets forth  
23 the incentives, the incentive period, the number of eligible  
24 employees, any termination provisions or provisions which  
25 allow the state to recapture incentives in the event the  
26 approved company fails to meet certain minimum job or capital

1 investment requirements, or both, and any other terms and  
2 conditions which the state, in its sole discretion, may  
3 require for an approved company to qualify for and receive  
4 incentives.

5 (16) RELATED COMPANY. Any company that is under  
6 common management or control with an approved company,  
7 provided that the related company is identified and  
8 pre-approved in the project agreement.

9 (17) RESEARCH AND DEVELOPMENT FACILITY. An  
10 establishment engaged predominantly in conducting original  
11 investigations undertaken on a systematic basis to gain new  
12 knowledge or applying research findings or other scientific  
13 knowledge to create new or significantly improved products or  
14 processes, or both.

15 (18) WAGE AND JOB CREATION INCENTIVE. Annual per job  
16 incentives for qualifying projects as follows:

17 a. \$500 per new eligible employee hired exceeding  
18 10% above county average hourly full-time wage.

19 b. \$750 per new eligible employee hired exceeding  
20 20% above county average hourly full-time wage.

21 c. \$1,000 per new eligible employee hired exceeding  
22 30% above county average hourly full-time wage.

23 Section 4. (a) The ADO Director and the Director of  
24 Finance shall determine, upon initial application on a form  
25 approved by the ADO and the Department of Finance, whether to  
26 recommend to the Governor, in writing, that a company be

1 approved as an approved company. In making their  
2 determination, the ADO Director and the Director of Finance  
3 may consider any criteria which they consider, in their sole  
4 discretion, including an independent financial review of the  
5 company to determine financial soundness and the need for a  
6 performance bond, to be appropriate. The ADO Director and the  
7 Director of Finance, in making their determination, shall  
8 conduct a public revenue estimate with respect to a proposed  
9 qualifying project and the wage and job creation incentives  
10 proposed to be granted by the Governor with respect thereto.

11 (b) After reviewing the recommendation of the ADO  
12 Director and the Director of Finance, the Governor, in his or  
13 her sole discretion, shall determine whether to approve, in  
14 writing, a company as an approved company. In making his or  
15 her determination, the Governor shall consider whether  
16 approving a company as an approved company serves a valid  
17 public purpose and is in the best interests of the citizens of  
18 the state.

19 (c) After the Governor approves a company as an  
20 approved company, the approved company must enter into a  
21 qualifying project agreement with the state in order to  
22 qualify for and receive wage and job creation incentives. The  
23 state, in its sole discretion, may require that an approved  
24 company meet minimum job creation or capital investment  
25 requirements, or both, to avoid the state recapturing  
26 incentives or terminating the qualifying project agreement.

1           Section 5. (a) An approved company that meets the  
2           qualifications specified in this act shall qualify to receive  
3           wage and job creation incentives.

4           (b) The incentive period shall be determined in the  
5           sole discretion of the Governor upon written recommendations  
6           by the ADO Director and the Director of Finance, except that  
7           in no event shall the incentive period exceed 10 consecutive  
8           years after a qualifying project first redeems eligible wage  
9           and job creation incentives. Furthermore, the total incentive  
10          period shall not exceed 20 years from the date the project was  
11          placed in service, regardless of when the first eligible  
12          credit was redeemed.

13          (c) Wage and job creation incentives shall be  
14          reduced or eliminated with respect to a qualifying project at  
15          the time the sum of all incentives received with respect to  
16          such qualifying project equals 100 percent of the capital  
17          costs of such qualifying project, all to the end that the  
18          aggregate amount of incentives shall not exceed 100 percent of  
19          the capital costs of the qualifying project.

20          (d) An approved company shall maintain the minimum  
21          number of jobs set forth in the qualifying project agreement  
22          for the entirety of the incentive period. Any incentive  
23          amounts received in years that minimum job requirements are  
24          not met shall be repaid to the state during the following  
25          year.

1           (e) Wage and job creation incentives may be taken  
2 against state tax liability for corporate income tax, utility  
3 gross receipts tax, sales tax, use tax or any other taxes paid  
4 by the entity or related entity approved in the qualifying  
5 project agreement, provided that no ad valorem taxes dedicated  
6 to education may be abated or credited.

7           Section 6. (a) Within 90 days after the end of a  
8 calendar quarter for which an approved company has qualified  
9 to receive a wage and job creation incentive, the approved  
10 company shall certify to the Department of Revenue, on a form  
11 approved by the Department of Revenue, the actual number of  
12 eligible employees for the calendar quarter, the payroll of  
13 eligible employees for the calendar quarter, and any other  
14 information required by the qualifying project agreement. The  
15 Department of Industrial Relations shall verify the actual  
16 number of eligible employees employed at the qualifying  
17 project during the relevant calendar quarter. If the  
18 Department of Industrial Relations is not able to provide such  
19 verification utilizing all available resources, the Department  
20 of Revenue may request such additional information from the  
21 approved company as may be necessary. The Department of  
22 Revenue may audit any approved company periodically to monitor  
23 compliance by the approved company with this act.

24           (b) An approved company may receive wage and job  
25 creation incentives only in accordance with a qualifying  
26 project agreement. If an approved company that is receiving

1 incentives expands a qualifying project, it may apply to the  
2 ADO and the Department of Revenue for additional incentives  
3 based on the new eligible employees.

4 Section 7. The ADO, the Department of Revenue, and  
5 the Department of Finance, with the assistance of other  
6 agencies, may adopt rules, in accordance with the  
7 Administrative Procedure Act, and application forms and other  
8 forms necessary to implement their respective duties and  
9 responsibilities under this act.

10 Section 8. Notwithstanding any other provision of  
11 this act to the contrary, and in addition to any other  
12 requirements included in this act, no incentives shall be  
13 provided pursuant to this act for any project without the  
14 approval of the State Industrial Development Authority.

15 Section 9. The wage and job creation incentives  
16 provided in this act shall not be available to any company  
17 filing application after December 31, 2018, unless this act is  
18 reauthorized pursuant to legislation in that year and once  
19 every five years succeeding the 2019 reauthorization. Any  
20 project granted incentives prior to December 31, 2018 will be  
21 entitled to those incentives pursuant to the project agreement  
22 regardless of whether the act is reauthorized. All provisions  
23 of this act notwithstanding, incentives authorized in this act  
24 shall be granted in years only when the unemployment rate is  
25 more than six percent (6%) on the first day of January of that  
26 year.



1                   Section 10. All laws or parts of laws which conflict  
2 with this act are repealed.

3                   Section 11. This act shall become effective  
4 immediately following its passage and approval by the Governor  
5 or its otherwise becoming law.