

1 HB540  
2 200311-1  
3 By Representative Poole  
4 RFD: Ways and Means Education  
5 First Read: 02-MAY-19

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8 SYNOPSIS: This bill would create the "Alabama  
9 Incentives Modernization Act" to add new tools for  
10 the attraction and expansion of businesses in rural  
11 Alabama and high-tech companies throughout the  
12 state.

13 For rural parts of the state, this bill  
14 would enhance the Alabama Jobs Act incentives that  
15 are available to companies locating or expanding in  
16 rural Alabama; would extend the Alabama Jobs Act to  
17 any rural project with at least five jobs; and  
18 would extend the investment credit under the Jobs  
19 Act to fifteen years. The bill would extend the  
20 benefits of being a "rural" county to any county  
21 with population less than 50,000. For all parts of  
22 the state, the bill would allow banks and insurance  
23 companies to purchase income tax credits and would  
24 amend the definition of qualifying projects for  
25 purposes of Alabama's incentives laws.

26 For high-tech companies, this bill would  
27 enhance the Alabama Jobs Act incentives that are

1 available to such companies; would allow the state  
2 to extend the Jobs Act incentives to any high tech  
3 company creating at least five jobs; would allow  
4 the investment tax credit calculation to include  
5 operating costs as well as capital costs; and would  
6 allow persons who move to Alabama to work in  
7 Alabama's high-tech companies, as well as investors  
8 in such companies, not to pay tax upon the  
9 disposition of their ownership interests in the  
10 companies.

11 The bill would expand the Opportunity Zone  
12 program in Alabama. The bill would create an  
13 Alabama capital gains tax reduction for investments  
14 in opportunity zone funds predominately investing  
15 in Alabama, in line with the federal Opportunity  
16 Zone law. The bill would allow various state funds  
17 to make investments into such opportunity zone  
18 funds and would guarantee principal protection or  
19 minimum rates of return for other investors in such  
20 funds, so long as extraordinary returns are  
21 allocated to such state funds.

22 The bill would enhance the Growing Alabama  
23 Credits by creating funding mechanisms for  
24 improving industrial parks, worker and student  
25 retention, an Agricultural Center, and business  
26 accelerators.

1 A BILL  
2 TO BE ENTITLED  
3 AN ACT  
4

5 To make legislative findings; to amend Sections  
6 40-18-376, 40-18-376.1, 40-18-410, 40-18-411, 40-18-412,  
7 40-18-413, and 40-18-414, Code of Alabama 1975; to add new  
8 Sections 40-18-6.1, 40-18-8.1 and 40-18-376.3, Code of Alabama  
9 1975; to add a new Article 2D to Chapter 10 of Title 41, Code  
10 of Alabama 1975; to add new tools for the attraction of new  
11 and expanding businesses in rural Alabama; to attract  
12 high-tech companies to Alabama; to add new tools for the  
13 attraction of new and expanding technology companies to  
14 Alabama; to make various enhancements to Alabama's incentives  
15 laws; to enhance Alabama's participation in the opportunity  
16 zone program; to provide for the repeal of conflicting laws;  
17 and to provide for an effective date.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This bill shall be known as the "Alabama  
20 Incentives Modernization Act."

21 Section 2. The Legislature finds as follows:

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

26 (b) Alabama's incentives grew out of a need to  
27 attract heavy industry to the State. Now, Alabama must also

1 prepare for the future by attracting and retaining high-tech  
2 companies, and preparing and retaining a workforce trained for  
3 such jobs.

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

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

11 (e) The Legislature finds that the enhancements to  
12 the Alabama Jobs Act, as found in this bill, may be made  
13 without compromising on the strict requirement that the state  
14 shall not offer any such incentives to the extent that the tax  
15 incentives sought exceed the anticipated revenues to the  
16 state, as required by Section 40-18-373(1)c., Code of Alabama  
17 1975.

18 Section 3. Sections 40-18-376, 40-18-376.1,  
19 40-18-410, 40-18-411, 40-18-412, 40-18-413, and 40-18-414 are  
20 amended to read as follows:

21 "§40-18-376.

22 "(a) If provided for in the project agreement, the  
23 incentivized company is allowed an investment credit in an  
24 annual amount equal to 1.5 percent of the capital investment  
25 incurred as of the beginning of the incentive period, to be  
26 used as follows:

1           "(1) To offset the income taxes found in this  
2 chapter, or as an estimated tax payment of income taxes;

3           "(2) To offset the financial institution excise tax  
4 found in Chapter 16;

5           "(3) To offset the insurance premium tax levied by  
6 Section 27-4A-3(a), or as an estimated payment of insurance  
7 premium tax;

8           "(4) To offset utility taxes; or

9           "(5) To offset some combination of the foregoing, so  
10 long as the same credit is used only once.

11           "The incentive period shall begin no earlier than  
12 the placed-in-service date. The incentive period shall be 10  
13 years. Should only some portion of a tax year be included in  
14 the incentive period, the amount of the investment credit  
15 shall be prorated on a daily basis.

16           "(b) A project agreement may specify any one of more  
17 of the following methods by which the investment credit shall  
18 be realized by the incentivized company, so long as a credit  
19 is not utilized more than once:

20           "(1)a. The investment credit may be claimed as a  
21 credit against the taxes in subsection (a) that are actually  
22 paid. In any one year, if the credit exceeds the amount of  
23 taxes that are allowed to be offset by the project agreement  
24 and that are owed by the incentivized company, the  
25 incentivized company may carry the credit forward, to the  
26 extent allowed in the project agreement. No carryforward shall

1 be allowed for more than five years. Rules similar to those  
2 used for Section 40-18-15.2 shall be applied.

3 "b. Prior to claiming the investment credit as  
4 provided in this subdivision, the incentivized company shall  
5 submit to the Department of Commerce a certification as to its  
6 capital investment as of the dates specified in the project  
7 agreement. Following such examination as it deems necessary,  
8 the Department of Commerce may certify the information and  
9 deliver the same to the Department of Revenue. Thereafter, the  
10 Department of Revenue shall allow the investment credit.

11 "(2) The project agreement may authorize an  
12 incentivized company that is taxed as a flow-through entity to  
13 allocate the credit among some or all of the owners in any  
14 manner specified, regardless of whether the allocation follows  
15 rules similar to 26 U.S.C. § 704(b) and the regulations  
16 thereunder. The owners may then use their allocated share of  
17 the investment credit to offset any of the taxes listed in  
18 subsection (a), as provided in subdivision (1). This  
19 subdivision (2) shall be liberally construed to apply to  
20 multiple levels of companies, to allow the investment credits  
21 to be used by those persons bearing the tax burdens of the  
22 qualifying project, and such companies shall include but shall  
23 in no way be limited to flow-through entities, employee stock  
24 ownership plans, mutual funds, real estate investment trusts,  
25 and it shall also apply to offset the income tax liability of  
26 employee/owners of a flow-through entity owned by an employee  
27 stock ownership plan trust.

1           "(3) All or part of the first three years of the  
2 investment credit may be transferred by the incentivized  
3 company and applied by another person or company as follows:

4           "a. A transfer of the credit shall be made by  
5 written, notarized contract.

6           "b. No such transfer shall occur before the contract  
7 is approved by the Secretary of Commerce. In determining  
8 whether to approve any transfer, the Secretary shall make all  
9 of the following findings:

10           "(i) That any year's investment credit will not be  
11 purchased by more than three transferees, unless such  
12 limitation is found by the Secretary of Commerce unnecessarily  
13 to limit the class of potential transferees;

14           "(ii) That the proposed transfer will enhance the  
15 economic benefits of the qualifying project; and

16           "(iii) That the transfer is at a value of at least  
17 85 percent of the present value of the credits, ~~and~~

18           "~~(iv) That the incentivized company and the~~  
19 ~~transferee are both subject to the tax listed in subsection~~  
20 ~~(a)(1), are both subject to the tax listed in subsection~~  
21 ~~(a)(2), or are both subject to the tax listed in subsection~~  
22 ~~(a)(3).~~

23           "Upon making affirmative findings on the criteria  
24 set forth above, the Secretary of Commerce shall recommend to  
25 the Governor that the transfer should be approved. Information  
26 about the proposed transfer shall be forwarded to the  
27 Governor, and the Governor may include provisions about the

1 transfer in the project agreement, or in an amendment thereto  
2 executed by the Governor and the incentivized company.

3 "c. If a transfer is approved, the incentivized  
4 company shall submit to the Department of Commerce the  
5 following:

6 "(i) Certifications as to its capital investment as  
7 of the dates specified in the project agreement. Following  
8 such examination as it deems necessary, the Department of  
9 Commerce may certify the information and deliver the same to  
10 the Department of Revenue.

11 "(ii) Certified information about the transfers,  
12 including identifying information about the transferees and  
13 the amount of credit each transferee should claim. Following  
14 such examination as it deems necessary, the Department of  
15 Commerce may certify the information and deliver the same to  
16 the Department of Revenue.

17 "d. Upon receipt of the certifications from the  
18 Department of Commerce as required by subsection (b)(3)c., the  
19 Department of Revenue shall thereafter allow the appropriate  
20 amount of the investment credit to offset the tax liability of  
21 the transferee for any of the taxes listed in subsection (a).  
22 A transferee may not make a subsequent transfer of the credit.

23 "e. If a credit is transferred, an incentivized  
24 company that is later determined by the Secretary of Commerce  
25 to have defaulted under the project agreement shall be liable  
26 for the underpayment of tax attributable to the credit and for  
27 penalties and interest thereon. Unless the purchase of the

1 credits is determined to have been made in a fraudulent  
2 manner, or is a transfer in anticipation of bankruptcy,  
3 insolvency or closure, a transferee shall not be liable for  
4 the unpaid tax attributable to the credit, or for penalties or  
5 interest thereon.

6 "(c) The realization methods in subsection (b) shall  
7 not create debts of the state within the meaning of Section  
8 213 of the Official Recompilation of the Constitution of  
9 Alabama of 1901, as amended.

10 "(d) (1) To the extent the investment credit is used  
11 to offset a financial institution excise tax liability, in  
12 making the report required by Section 40-16-6(d), the  
13 financial institution receiving the investment credit shall  
14 not take into account the qualifying project, and the  
15 Department of Finance shall promulgate regulations to ensure  
16 that the credit in no case would reduce the distribution for  
17 municipalities and counties.

18 "(2) To the extent the investment credit is used to  
19 offset an insurance premium tax liability, the Department of  
20 Finance shall promulgate regulations to ensure that the credit  
21 would equally reduce the distributions for the Education Trust  
22 Fund, ~~but in no case would the investment credit reduce the~~  
23 ~~distributions for~~ the State General Fund ~~or~~ and the Alabama  
24 Special Mental Health Trust Fund.

25 "(3) To the extent the investment credit is used to  
26 offset liability for the tax imposed by Section 40-21-82, the  
27 Department of Finance shall promulgate regulations to ensure

1 that the credit in no case would reduce the distribution for  
2 the Alabama Special Mental Health Trust Fund.

3 "§40-18-376.1.

4 "(a) The provisions in this section shall apply to  
5 any targeted county, a term defined in this article to mean  
6 any Alabama county that has a population of ~~2~~50,000 or less,  
7 as determined by the Commissioner of Labor as of each January  
8 1 using the most current data available from the United States  
9 Departments of Labor or Commerce, the United States Bureau of  
10 the Census, or any other federal or state agency or  
11 department.

12 "(b) In making the findings required by Section  
13 40-18-373(a), a company that proposes a qualifying project in  
14 a targeted county shall be an approved company for purposes of  
15 this section only if the Secretary of Commerce makes the  
16 additional finding that the qualifying project will increase  
17 the economic diversity of, or otherwise benefit, the targeted  
18 county.

19 "(c) For purposes of determining in Section  
20 40-18-372(2)b. whether a qualifying project may receive the  
21 jobs act incentives, a project to be located in a targeted  
22 county shall employ at least ~~25~~ five new employees, absent a  
23 finding of extraordinary circumstances by the Secretary of  
24 Commerce.

25 "(d) If the qualifying project is located in a  
26 county which is deemed to be a targeted county on the date the

1 project agreement is executed, the following shall be  
2 applicable:

3 "(1) The jobs credit provided in Section  
4 40-18-375(a) shall be 4.0 percent of the wages paid to  
5 eligible employees during the prior year; and

6 "(2) The investment credit provided in Section  
7 40-18-376(a) shall have an incentive period of 15 years, ~~but~~  
8 ~~only if the qualifying project is expected to sell the~~  
9 ~~majority of its output or services to a business located in~~  
10 ~~Alabama that is described in Section 40-18-372(a), so that the~~  
11 ~~transit distance for the output or services shall be less than~~  
12 ~~50 miles.~~

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

18 "§40-18-410.

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

21 "(1) ECONOMIC DEVELOPMENT ORGANIZATION. A local  
22 economic development organization or a state economic  
23 development organization.

24 "~~(1)~~ (2) GROWING ALABAMA CREDIT. The credit provided  
25 for in Section 40-18-413(a).

1           "~~(2)~~ (3) INDUSTRY OR BUSINESS. An entity which would  
2           conduct at a site an activity that is primarily described in  
3           Section 40-18-372(1).

4           "~~(3)~~ (4) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION.  
5           Organizations which are determined by the Department of  
6           Commerce to meet both of the following criteria:

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

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

16          "~~(4)~~ (5) RENEWAL OF ALABAMA COMMISSION. The Renewal  
17          of Alabama Commission created by Section 40-18-402.

18          "~~(5)~~ (6) SITE. Real property owned by a local  
19          economic development organization and intended for use by an  
20          industry or business.

21          "(7) STATE ECONOMIC DEVELOPMENT ORGANIZATION.  
22          Organizations which are determined by the Department of  
23          Commerce to be an Alabama entity not operating for a profit  
24          which is charged with improving the state or a region of the  
25          state.

26                 "§40-18-411.

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

6           "~~(1)~~ a. If there is a pending expression of interest  
7 about the site from an industry or business, a list of the  
8 site preparation or public infrastructure work needed to make  
9 the site acceptable to the industry or business.

10           "~~(2)~~ b. If the site has been offered to one or more  
11 industries or businesses but the offer did not result in the  
12 industry or business locating on the site, a list of the site  
13 preparation or public infrastructure work which, if it had  
14 been completed, would have made the site acceptable to the  
15 industries or businesses; or

16           "c. If the site is an industrial park which needs  
17 connections to interstates, highways, roadways, rail systems,  
18 or sewer, fiber, electrical, gas, or water infrastructure.

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

22           "a. A marketing program to encourage persons trained  
23 in fields related to science, technology, engineering, or  
24 mathematics to remain in Alabama;

25           "b. The creation, operation, or support of an  
26 accelerator program for technology companies, as described in  
27 Section 40-18-376.3(c) (2); or

1                   "c. The construction, maintenance, promotion,  
2                   operation, management, leasing, and subleasing of an  
3                   Agricultural Center which includes a multi-use facility and  
4                   related commercial and non-commercial structures for  
5                   livestock, equestrian, small animal shows and events,  
6                   spectator events, trade shows, educational conferences,  
7                   agricultural and agricultural-related industries, educational,  
8                   demonstrational or training purposes, educational and training  
9                   conferences or events, recreational vehicle rallies,  
10                   recreational vehicle multi-day parking, hosting of corporate  
11                   and non-corporate organization meetings, use as fair grounds,  
12                   operation of retail activities, and other events and  
13                   facilities expected to draw participants and spectators from  
14                   states located across the southeastern United States, with a  
15                   projected total annual economic impact upon completion of all  
16                   phases of the Agricultural Center at least \$35,0000,000 and  
17                   with the related and supporting infrastructure and facilities  
18                   having a projected capital expenditure upon completion of all  
19                   phases of the Agricultural Center of at least \$100,000,000.

20                   "(b) For any site preparation or public  
21                   infrastructure work ~~listed in an application to the Department~~  
22                   ~~of Commerce,~~ provided in subsection (a) (1), the application  
23                   shall include quotes for the completion of such work,  
24                   following compliance with the procedures set forth by the  
25                   Department of Economic and Community Affairs, as if the  
26                   organization were disbursing state funds received from such  
27                   department.

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

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

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

15           "§40-18-412.

16           "(a) Following a review, if the Department of  
17 Commerce should approve the application, provided in Section  
18 40-18- 18 411(a), it shall forward the application to the  
19 Renewal of Alabama Commission.

20           "(b) The Renewal of Alabama Commission shall  
21 consider the application and shall approve it if it deems it  
22 worthy of approval. As to applications for projects located in  
23 communities which have the potential to provide additional  
24 funding separate from the Growing Alabama Credits, the  
25 commission shall take into consideration whether such separate  
26 funding is to be provided to the project which is the subject  
27 of the application. Meetings of the commission are subject to

1 Chapter 25A of Title 36. Notwithstanding the foregoing, the  
2 commission may meet by telephone or some other  
3 telecommunications device so long as members of the public are  
4 allowed the opportunity to listen to or otherwise observe the  
5 commission's deliberations.

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

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

15 "(1) Require the ~~local~~ economic development  
16 organization to use funding received as a result of this law  
17 only for the purposes approved by the commission as expressed  
18 in the agreement.

19 "(2) Require the ~~local~~ economic development  
20 organization to make periodic reports, not more often than  
21 annually, to the Department of Commerce and the commission, as  
22 required by the commission, on the disposition of the funds.  
23 As to a project described in Section 40-18-411(a)(1), the  
24 report shall include information on the marketing of the  
25 site, and the ultimate use of the site until such time as it  
26 makes a final report.

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

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

7           "(f) The Department of Commerce shall publish on its  
8 website a list of all approved applications, the approved  
9 applications themselves, a list of the economic development  
10 organizations which made the approved applications, and the  
11 reports required by Section 40-18-414(b).

12           "§40-18-413.

13           "(a) A taxpayer is allowed a Growing Alabama Credit  
14 to be applied against the tax levied by this chapter. In no  
15 event shall the Growing Alabama Credit cause a taxpayer's  
16 income tax liability to be reduced by more than 50 percent.  
17 Unused credits may be carried forward for no more than five  
18 years.

19           "(b) Growing Alabama Credits shall be granted to  
20 taxpayers using an online system administered by the  
21 Department of Revenue. The online system shall allow taxpayers  
22 to agree to make a cash contribution to ~~a local~~ an economic  
23 development organization which was approved by the Renewal of  
24 Alabama Commission, as provided in Section 40-18-412. The  
25 online system shall ensure that credits are not granted for  
26 contributions to ~~a local~~ an economic development organization

1 in excess of the amounts approved by the Renewal of Alabama  
2 Commission, as provided in Section 40-18-412.

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

8 "(d) The Renewal of Alabama Commission shall reserve  
9 at least 25 percent of the amounts specified in subsection (c)  
10 for projects in targeted counties described in Section  
11 40-18-376.1.

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

22 "§40-18-414.

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

1           "(b) The ~~local~~ economic development organization  
2 shall report to the Department of Commerce upon the completion  
3 of the ~~site preparation or public infrastructure work, upon~~  
4 ~~the transfer of the site to an industry or business, and at~~  
5 ~~other~~ work and at such times as may be required or requested  
6 by the Department of Commerce.

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

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

20           Section 40-18-6.1.

21           (a) The provisions in 26 U.S.C. § 1400Z-2 shall be  
22 applicable to an investment in an opportunity fund with at  
23 least 75 percent of its qualified opportunity zone property,  
24 by dollar value, located in Alabama. The department shall  
25 promulgate rules for determining whether an investment in a  
26 corporation or partnership should be considered to be located

1 in Alabama. This subsection (a) shall be applicable in  
2 calculating each of the following:

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

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

7 (b) Any approved opportunity fund may enter into a  
8 project agreement with ADECA to provide to such fund's  
9 investors impact investment tax credits against any tax  
10 liability described in paragraphs (1) and (2) of subsection  
11 (a). Such impact investment tax credits shall be allocated  
12 annually, but only to the extent that one or more projects  
13 undertaken by the fund are not producing the returns provided  
14 in the project agreement. The project agreement may authorize  
15 the fund to allocate the credits among some or all of the  
16 owners in any manner specified, regardless of whether the  
17 allocation follows rules similar to 26 U.S.C. § 704(b) and the  
18 regulations thereunder. Unused credits may carry forward for  
19 twenty years.

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

25 (d) In no event shall the credits allowed under this  
26 section exceed \$50 million. In no event shall the credits be  
27 allocated during the first four years of the existence of the

1 fund, but credits may be allocated in the fifth year to  
2 account for inadequate aggregate returns during the first four  
3 years. Credits may not be allocated to projects in which an  
4 approved opportunity fund has committed to invest prior to the  
5 effective date of this act.

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

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

12 (1) "ADECA" shall mean the Department of Economic  
13 and Community Affairs.

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

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

18 Section 40-18-8.1.

19 (a) A qualified employee's gain shall not be  
20 recognized upon the disposition of his or her ownership  
21 interest in a qualified entity, and a qualified investment  
22 fund's gain shall not be recognized upon the disposition of  
23 the fund's ownership interest in a qualified entity.

24 (b) Subsection (a) shall be applied as to each of  
25 the following taxes:

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

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

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

5           (1) A "company" is anyone or anything with the  
6 powers to conduct a lawful business.

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

10          (3) A "qualified entity" is any company which meets  
11 all of the following:

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

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

18           c. For a period of at least three years prior to the  
19 disposition date and for a period of at least five years after  
20 the disposition date, Alabama is the company's headquarters,  
21 the place of residence of its top three executives, and the  
22 place of residence of at least 75 percent of its employees;  
23 and

24           d. From the date that the company makes Alabama its  
25 headquarters and continuing until the date which is five years  
26 after the disposition date, the company meets all criteria set  
27 forth in Section 40-18-376.3(c).

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

12           (4) A "qualified employee" is any employee of a  
13 qualified entity who meets all the following:

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

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

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

22           d. Within nine months of the disposition date, the  
23 employee begins employment at or ownership or some other  
24 company which meets all the criteria set forth in Section  
25 40-18-376.3(c); and

26           e. The employee has an educational degree in a field  
27 which the Secretary of Commerce determines by regulation to

1 fall within the general areas of science, technology,  
2 engineering, and mathematics.

3 (5) A "qualified investment fund" is any company  
4 which meets all the following:

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

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

10 (d) The department may assess a qualified employee  
11 for any exclusion from income under this section to which the  
12 employee is not ultimately entitled, with allowed interest and  
13 penalties, pursuant to the terms of Chapter 2A or 29. The  
14 statute of limitations shall be tolled for a period of ten  
15 years beginning on the date of the return under which the  
16 exclusion from income in this section is claimed. The  
17 Department may prescribe forms for the enforcement of this  
18 act.

19 Section 5. A new Section 40-18-376.3 is added to  
20 Article 16 of Chapter 18 of Title 40 to read as follows:

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

1 (b) The following shall be allowed to any company  
2 which meets all the criteria in subsection (a):

3 (1) A qualifying project shall be deemed to be in  
4 existence notwithstanding the requirements of Section  
5 40-18-372 so long as at least five new employees are employed  
6 at the qualifying project, absent a finding of extraordinary  
7 circumstances by the Secretary of Commerce;

8 (2) The investment credit provided in Section  
9 40-18-376 shall be an annual amount equal to 1.5 percent of  
10 all the technology company's costs and expenses incurred in  
11 connection with the operation of the technology company after  
12 the execution of the project agreement, whether or not such  
13 costs and expenses are required to be capitalized; and

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

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

18 a. Activities within subsector 518; industry group  
19 5112, 5121 (other than 51213), 5415, or 5417; or industry  
20 51913 of the 2012 North American Industry Classification  
21 System, or any similar classification system developed in  
22 conjunction with the United States Department of Commerce or  
23 Office of Management and Budget;

24 b. The use of technology to develop new coding or  
25 processes for the creation or delivery of goods or services in  
26 the following fields, or any additional activities determined  
27 by the Secretary of Commerce to be beneficial to the

1 enhancement of businesses rooted in any of the following  
2 fields:

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

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

8 (2) A company which fosters the growth and  
9 development of other technology companies through the use of a  
10 business accelerator program in Alabama.

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

13 Article 2D.

14 Section 41-10-47.01

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

18 (b) The following terms shall have the following  
19 meanings:

20 (1) "ADECA" shall mean the Department of Economic  
21 and Community Affairs.

22 (2) "Approved opportunity fund" shall mean any fund  
23 approved by ADECA as meeting all of the following:

24 a. ADECA determines that the fund has the capacity  
25 to improve Alabama's low-income opportunity zone communities  
26 by approving an application showing all of the following:

- 1           1. the amount of existing committed capital or  
2 potential to raise committed capital;
- 3           2. the investment track record or strength of the  
4 applicant's management team;
- 5           3. the existing project pipeline or strategy for  
6 developing new pipeline;
- 7           4. the fund structure and anticipated returns within  
8 that fund structure;
- 9           5. the presence of sound legal, accounting, and  
10 compliance policies and procedures;
- 11          6. a strategy for measuring, tracking, and annual  
12 reporting to ADECA on how the approved opportunity fund is  
13 achieving investment outcomes set forth in its applications;  
14 and
- 15          7. one or more clear and demonstrable partnerships  
16 with local or statewide public or nonprofit entities to ensure  
17 community engagement.

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

- 22           1. rural areas described in Section 40-18-376.1(a);
- 23           2. technology companies which meet all the criteria  
24 in Section 40-18-376.3(c), or facilities to house such  
25 companies;

1                   3. companies or projects described in Section  
2 40-18-372(1), or facilities to house such companies or  
3 projects;

4                   4. workforce training;

5                   5. affordable housing, in which case the burden  
6 shall be on the fund to demonstrate rent levels charged and  
7 why those rents are appropriate for a particular geographic  
8 area;

9                   6. remediation of blighted or abandoned property, in  
10 which case the burden shall be on the fund to demonstrate why  
11 targeted properties qualify as blighted or abandoned;

12                   7. revitalization of distressed urban neighborhoods,  
13 in which case the burden shall be on the fund to demonstrate  
14 why a neighborhood is distressed and why its investment  
15 strategy will revitalize the neighborhood; or

16                   8. companies or projects that will have substantial,  
17 measurable impact on social, environmental, or economic  
18 conditions in low-income areas, or facilities to house such  
19 companies or projects, in which case the burden shall be on  
20 the fund to demonstrate why such companies or projects will  
21 have such substantial effects.

22                   In addition, ADECA may determine that a fund meets  
23 this subparagraph b. if it can demonstrate that it will create  
24 substantial wealth within and for residents of Alabama's  
25 low-income and rural communities and will directly track the  
26 wealth created.

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

9           (3) "Qualified funds" are each of the following:

10           a. The Alabama Trust Fund created by Amendment No.  
11 450 to the Constitution of Alabama of 1901;

12           b. The Alabama Game and Fish Fund created by Section  
13 9-2-20, the Alabama Game and Fish Endowment Fund created by  
14 Section 9-2-20.1, and the Alabama Nongame Wildlife Endowment  
15 created by Section 9-2-20.2;

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

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

21           e. The Municipal Government Capital Improvement Fund  
22 created by Section 11-66-4;

23           f. The Alabama Corrections Institution Finance  
24 Authority funds referred to in Chapter 2 of Title 14;

25           g. The Public Health Finance Authority funds  
26 described in Chapter 3A of Title 22;

1                   h. The Public Road and Bridge funds described in  
2 Chapter 6 of Title 23;

3                   i. The Unemployment Compensation Trust Fund created  
4 by Section 25-4-30;

5                   j. The Mental Health Finance Authority funds  
6 described in Article 11 of Chapter 10 of Title 41;

7                   k. The Incentives Financing Authority funds  
8 described in Division 1 of Article 16 of Chapter 10 of Title  
9 41;

10                  l. The Alabama Senior Services Trust Fund created by  
11 Section 41-15C-1; and

12                  m. Any fund of funds representing two or more of the  
13 funds listed in subparagraphs a. through l.

14                  (c) ADECA may charge application fees for the powers  
15 and responsibilities delegated to it herein, and it may charge  
16 fees for its financial and oversight audits of such funds.  
17 ADECA may retain consultants to assist it with the powers and  
18 responsibilities delegated to it herein.

19                  Section 7. Both of the following shall be considered  
20 industrial or research enterprises for purposes of Chapter 9B  
21 of this Title 40, approved activities for purposes of Chapter  
22 9G of this Title 40, and qualifying projects for purposes of  
23 Article 16 of Chapter 18 of this Title 40:

24                  (a) any trade or business predominately consisting  
25 of an activity described in 40-18-376.3(c); and

26                  (b) the Agricultural Center described in Section  
27 40-18-411(a) (2) c.

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

6                   Section 9. If a court of competent jurisdiction  
7                   adjudges invalid or unconstitutional any clause, sentence,  
8                   paragraph, section, or part of this Act, such judgment or  
9                   decree shall not affect, impair, invalidate, or nullify the  
10                  remainder of this Act, but the effect of the decision shall be  
11                  confined to the clause, sentence, paragraph, section, or part  
12                  of this Act adjudged to be invalid or unconstitutional.

13                  Section 10. All laws or parts of laws which conflict  
14                  with this Act are repealed.

15                  Section 11. This Act shall become effective sixty  
16                  days following its passage and approval by the Governor, or  
17                  following its otherwise becoming a law.