

1 HB109
2 203639-5
3 By Representatives Garrett, Sanderford, McMillan and Scott
4 RFD: Ways and Means Education
5 First Read: 04-FEB-20

1 To enact the Alabama Research and Development Act;
2 to allow a research and development tax credit for qualified
3 research expenses in Alabama; to provide that no more than \$20
4 million of tax credits for major research and development
5 expenses and \$5 million of tax credits for minor research and
6 development in any calendar year; and no one taxpayer would be
7 allowed more than 20 percent in a single tax year; to allow
8 the credits to offset the taxes in Chapters 16 and 18 of Title
9 40, Code of Alabama 1975, and estimated payments thereof; to
10 provide that the income tax credits shall not affect estimated
11 income tax payments before January 1, 2021; to provide for the
12 promulgation of rules; to provide for the coordination between
13 the availability of the federal research credit and the credit
14 herein; and to provide for an effective date.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. This act shall be known as the Alabama
17 Research and Development Act of 2020.

18 Section 2. For the purpose of this article, the
19 following words and phrases shall have the following meanings:

20 (a) ALABAMA RESEARCH ENTITY. One or more of the
21 following:

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

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

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

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

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

4 a. Is exempt from federal income tax under 26 U.S.C.
5 § 501(c)(3),

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

13 c. Has its principal place of business in the state;
14 and

15 d. Has, or is anticipated to have, at least 75
16 percent of its property and payroll in Alabama, using the
17 property and payroll factor calculations found in Title 40,
18 Chapters 16 or 18, as appropriate.

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

21 (1) The taxpayer's sector or sectors according to
22 the 2017 edition of the North American Industry Classification
23 System (NAICS) as published by the United States Census
24 Bureau.

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

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

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

8 b. A type listed in a rule issued by the Department
9 of Commerce pursuant to the Alabama Administrative Procedure
10 Act. Notwithstanding the foregoing, an approved activity
11 shall not include a headquarters facility otherwise allowed as
12 an approved activity.

13 (c) CONSORTIUM RESEARCH EXPENSES. Any amount paid or
14 incurred by the taxpayer to any Alabama research entity for
15 qualified research, but not including any expenses for
16 research activities performed outside Alabama.

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

21 (1) Consortium research expenses; or

22 (2) Expenses for research activities performed
23 outside Alabama.

24 (e) DEPARTMENT. The Alabama Department of Revenue.

25 (f) IN-HOUSE RESEARCH EXPENSES. The meaning given in
26 U.S.C. § 41(b)(2), but not including wages paid or incurred

1 to employees working outside Alabama and not subject to the
2 Alabama individual income tax.

3 (i) MAJOR RESEARCH AND DEVELOPMENT EXPENSES.

4 (1) A taxpayer with Alabama qualified research and
5 development expenses for the taxable year in excess of \$5
6 million.

7 (j) MINOR RESEARCH AND DEVELOPMENT EXPENSES.

8 (1) A taxpayer with Alabama qualified research and
9 development expenses for the taxable year less than \$5
10 million.

11 (g) NAICS CODE. Any sector, subsector, industry
12 group, industry or national industry of the 2017 North
13 American Industry Classification System, or any similar
14 classification system developed in conjunction with the United
15 States Department of Commerce or Office of Management and
16 Budget.

17 (h) QUALIFIED RESEARCH. The meaning given in 26
18 U.S.C. § 41(d), if conducted in Alabama in pursuit of an
19 approved activity. In applying any terms in 26 U.S.C. § 41,
20 "qualified research" shall have the meaning given herein.

21 Section 3. (a) A Research and Development tax credit
22 is allowed for qualified research conducted in Alabama. The
23 tax credit shall be in an amount equal to the sum of the
24 following amounts:

25 (1) Ten percent of the following:

1 a. In-house research expenses and contract research
2 expenses for qualified research conducted in Alabama during
3 the taxable year, minus

4 b. The in-house research expenses and contract
5 research expenses conducted in Alabama, on average, over the 3
6 taxable years preceding the taxable year for which the credit
7 is being determined.

8 (2) Twenty-five percent of the following:

9 a. Consortium research expenses for qualified
10 research conducted in Alabama during the taxable year, minus

11 b. The consortium research expenses conducted in
12 Alabama, on average, over the 3 taxable years preceding the
13 taxable year for which the credit is being determined.

14 (b) The Research and Development tax credit may
15 offset the taxes levied by Chapters 16 and 18, or an estimated
16 payment of the tax due under Chapter 16 or 18, but not below
17 zero. In no event shall the credits provided for by this
18 article be allowed to reduce any estimated payment of the
19 taxes levied by Chapters 16 and 18 due for tax period ending
20 before January 1, 2021.

21 (c) All other state income tax and financial
22 institution excise tax credits shall be applied prior to the
23 application of the tax credit provided in this section.

24 Section 4. (a) If in any one tax year the approved
25 Research and Development tax credit exceeds the amount of the
26 taxpayer's applicable tax liability, the taxpayer may carry
27 forward the unused tax credit. However, no carryforward shall

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

3 (b) A taxpayer may assign and convey the Research
4 and Development tax credit to another entity if all of the
5 assets of the taxpayer are assigned and conveyed in the same
6 transaction. The Department, by rule, shall adopt a written
7 transfer agreement form. The transfer statement form shall
8 include the name and federal taxpayer identification number of
9 the transferor and each transferee listed therein along with
10 the amount of the tax credit to be transferred to each
11 transferee listed on the form. The transfer statement form
12 shall also contain such other information as the Department
13 may from time to time reasonably require. For each transfer,
14 the transferor shall file: (1) a completed transfer statement
15 form; (2) a copy of the tax credit certificate issued by the
16 Department documenting the amount of tax credits which the
17 transferor intends to transfer; (3) a copy of the proposed
18 written transfer agreement; and (4) a transfer fee payable to
19 the Department in the amount of one thousand dollars (\$1,000)
20 per transferee listed on the transfer statement form. The
21 transferor shall file with the Department a fully executed
22 copy of the written transfer agreement with each transferee
23 within 30 days after the completed transfer. Filing of the
24 written transfer agreement with the Department shall perfect
25 such transfer with respect to such transferee. Within 30 days
26 after the Department's receipt of the fully executed written
27 transfer agreement, the Department shall issue a tax credit

1 certificate to each transferee listed in such agreement in the
2 amount of the tax credit so transferred. Such certificate
3 shall be used by the transferee in claiming the tax credit.
4 The Department may promulgate such additional rules as are
5 necessary to permit verification of the ownership of the tax
6 credits but shall not promulgate any rules which unduly
7 restrict or hinder the transfer of the tax credits.

8 (c) The tax credit shall be applied only to the
9 state portion of the tax liability and shall not offset or
10 reduce the financial institution excise tax distribution made
11 to municipalities and counties pursuant to Section 40-16-6.

12 (d) To the extent the Research and Development tax
13 credit is utilized by the taxpayer or by a permitted
14 transferee, no deduction for the related expenses shall be
15 allowed.

16 (e) Any credit allowed shall be for research and
17 development expenses in excess of the rolling three-year
18 average of previous research and development expenses.

19 Section 5. (a) The maximum amount of Research and
20 Development tax credits all taxpayers shall be allowed
21 pursuant to this act in any calendar year shall be limited to
22 the following:

23 (1) \$20 million for major research and development
24 expenses.

25 (2) \$5 million for minor research and development
26 and development expenses.

1 (b) No taxpayer shall receive a Research and
2 Development tax credit of more than 20 percent of the
3 applicable credit in a single tax year. The tax credits shall
4 be allocated among various taxpayers using the procedures
5 described in this section.

6 (c) Each taxpayer who wishes to claim an Research
7 and Development tax credit shall file an application with the
8 Department showing the amount of the tax credit which the
9 taxpayer expects in good faith to claim during the tax year.
10 No application and no claim shall exceed 20 percent. The
11 applications shall be submitted electronically to the
12 Department between March 15 and December 31, and such
13 applications shall apply to the tax year that begins during
14 that same calendar year.

15 (d) As applications are submitted, the Department
16 shall approve any the Department deems sufficient under this
17 article, until the total approved applications equal the \$20
18 million cap on anticipated Major Research and Development tax
19 credits and \$5 million cap on Minor Research and Development
20 tax credits. All applications received during the application
21 period up to the respective caps shall receive approval for
22 the full amount applied for dependent upon the qualifications.
23 If the total amount of all of the applications shall exceed
24 the \$20 million and \$5 million Research and Development caps,
25 each applicant shall receive a pro rata share of the credits
26 available. To the extent that the applications are not
27 approved by December 31, the portion not approved shall be

1 deemed conditionally denied by the Department. Taxpayers may
2 continue to submit applications after the applicable cap is
3 reached, and applications that the Department deems otherwise
4 sufficient shall be deemed conditionally denied but maintained
5 in the order received.

6 (e) Following the completion of the qualifying
7 research expenditures, the taxpayer shall submit records to
8 the Department sufficient to document qualification for the
9 credit. After reviewing taxpayer records and finding them
10 satisfactory to document qualification for the credit, the
11 Department shall issue a certificate to the taxpayer for the
12 amount of credit not to exceed the amount originally applied
13 for.

14 (f) If a tax return submitted for the corresponding
15 tax year indicates that the full amount of the Research and
16 Development tax credit with respect to an approved taxpayer
17 was not claimed for use in the current or a carryforward tax
18 year, the Department shall approve, in the order they were
19 received, the applications that were sufficient but initially
20 deemed conditionally denied until the approved applications
21 represent in the aggregate the \$20 million and \$5 million caps
22 of approved Research and Development tax credits. If the total
23 Research and Development tax credits claimed exceeds the
24 aggregate \$20 million and \$5 million caps of approved Research
25 and Development credits, the Department shall allocate the
26 total amount of Research and Development credits claimed to
27 qualified research entities on a pro rata basis. The

1 Department shall timely notify all taxpayers who filed such
2 applications.

3 (g) The calculations required to be made by the
4 Department shall be based on the initial tax returns filed by
5 taxpayers who had Research and Development tax credits
6 approved. No taxpayer may amend a tax return to claim an
7 Research and Development tax credit, or a larger amount of an
8 Research and Development tax credit, that was not claimed on
9 its tax return filed initially with the Department, unless the
10 amendment is to claim a credit that was deemed conditionally
11 denied but later approved by the Department, in the amount so
12 approved.

13 Section 6. All filings made by a private party with
14 the Department shall be made according to the rules and using
15 forms promulgated by the Department. Any such filing shall be
16 treated as a tax return, subject to taxpayer privacy
17 restrictions as well as any penalties that may be imposed by
18 the Department.

19 (b) Nothing in this article shall be construed to
20 make available to any taxpayer any right to the benefits
21 conferred by this article absent strict compliance with this
22 article.

23 (c) The Department is authorized to issue rules
24 under the Alabama Administrative Procedure Act as necessary to
25 implement and administer the provisions of this article. This
26 article shall be construed generally to conform to 26 U.S.C. §
27 41, except for percentage reductions specified therein. In the

1 event that 26 U.S.C. § 41 should be repealed or suspended by
2 Congress in any year, the credit provided in this article
3 shall refer to and be based on the version of 26 U.S.C. § 41
4 as it existed on the last day prior to the effective date of
5 such repeal or suspension.

6 Section 7. Reporting requirements.

7 (a) (1) Effective January 1, 2022, taxpayers
8 receiving tax credits pursuant to this act shall file an
9 annual informational report in a manner as prescribed by the
10 Department. All information submitted to the Department by
11 taxpayers claiming or seeking certification of a credit shall
12 be subject to the confidentiality provisions of Section
13 40-2A-10.

14 (2) The information on the reports required by this
15 section shall be consistent with the information required by
16 the Legislature pursuant to Section 40-1-50, and rules adopted
17 thereunder. Aggregated information provided pursuant to this
18 section is exempt from the confidentiality provisions of
19 Section 40-2A-10 and shall be provided by the Department to
20 the Legislature in accordance with Section 40-1-50 and rules
21 adopted by the Department.

22 Section 8. Unless extended by an act of the
23 legislature, this act shall sunset on December 31, 2025.

24 Section 9. Subject to Section 9 hereof, this act
25 shall become effective for tax years beginning on or after
26 January 1, 2021 , following its passage and approval by the
27 Governor, or its otherwise becoming law.

