

1 SB373  
2 185522-1  
3 By Senator Pittman  
4 RFD: Finance and Taxation General Fund  
5 First Read: 20-APR-17

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8 SYNOPSIS: Under existing law, the Alabama Jobs Act  
9 provides certain incentives and credits to certain  
10 qualifying projects. The act caps the aggregate  
11 balance of outstanding incentives at \$850 million  
12 and provides that the incentives are not available  
13 to qualifying projects for which project agreements  
14 have not been executed on or before December 31,  
15 2019.

16 This bill would extend eligibility for  
17 incentives under the act to projects for which  
18 project agreements have been executed on or before  
19 December 31, 2023, and would exempt megaprojects,  
20 as defined by the act, from the \$850 million  
21 aggregate cap on outstanding incentives.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
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1                   Relating to economic development; to amend Sections  
2                   40-18-370, as last amended by Act 2016-321, 2016 Regular  
3                   Session, 40-18-382 and 40-18-383, Code of Alabama 1975,  
4                   relating to the Alabama Jobs Act, to continue the eligibility  
5                   for incentives under the act; and to exempt certain  
6                   megaprojects, as defined by the act, from the \$850 million  
7                   aggregate cap on outstanding incentives.

8                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9                   Section 1. Sections 40-18-370, as last amended by  
10                  Act 2016-321, 2016 Regular Session, 40-18-382 and 40-18-383,  
11                  Code of Alabama 1975, are amended to read as follows:

12                  "§40-18-370.

13                  "(a) This article shall be known and may be cited as  
14                  the Alabama Jobs Act.

15                  "(b) The Legislature makes the following findings:

16                  "(1) The economic well-being of the citizens of the  
17                  state will be enhanced by the increased development and growth  
18                  of employment within Alabama.

19                  "(2) It is in the best interests of the state to  
20                  provide certain incentives to allow the state to foster  
21                  economic development through the recruitment of quality  
22                  projects and the expansion of existing businesses within  
23                  Alabama.

24                  "(3) The incentives provided for in this article do  
25                  not raise any taxes for any individuals or businesses in  
26                  Alabama under state law.

1           "(4) The incentives provided in this article will  
2 allow the state to encourage the creation of new jobs that may  
3 not otherwise exist within the State of Alabama.

4           "(5) The incentives provided in this article will  
5 increase revenues for the state without increasing taxes.

6           "(6) The Constitution of the State of Alabama grants  
7 the Legislature the authority to approve and authorize  
8 exemptions, exclusions, deductions, and credits from taxation  
9 in order to define the net proceeds of any tax payable under  
10 state law.

11           "(7) The Constitution of the State of Alabama was  
12 framed, and the laws of the state were enacted, with the goal  
13 of protecting, encouraging, and developing individual  
14 enterprise.

15           "(8) The incentives provided in this article will  
16 not decrease the salary paid to any education personnel.

17           "(9) The powers to be granted and the purposes to be  
18 accomplished by this article will create an environment for  
19 the recruitment of quality projects and the expansion of  
20 existing businesses within Alabama.

21           "(10) Economic development through tax and financial  
22 incentives benefits the citizens of the state and is a public  
23 purpose of the state.

24           "(c) In addition to the definitions found at Section  
25 40-18-1, the following words and phrases shall have the  
26 following meanings:

1           "(1) APPROVED COMPANY. Any company determined by the  
2 Secretary of Commerce and the Governor to meet the criteria  
3 provided in Section 40-18-373.

4           "(2) CAPITAL INVESTMENT. All costs and expenses  
5 incurred by the incentivized company in connection with the  
6 acquisition, construction, installation, and equipping of a  
7 qualifying project, if such costs are required to be  
8 capitalized for purposes of the federal income tax, determined  
9 without regard to any rule that permits expenditures properly  
10 chargeable to a capital account to be treated as current  
11 expenditures. However, for any project involving the  
12 extraction of natural resources, the capital investment shall  
13 not include the costs of acquiring land, land recording fees,  
14 architectural and engineering services, environmental studies  
15 and environmental mitigation.

16           "(3) COMPANY. Anyone or anything which has the  
17 powers to own a project and have employees.

18           "(4) ELIGIBLE EMPLOYEES. Those employee positions  
19 set forth in a project agreement that will be the result of  
20 new jobs created by or through a qualifying project.

21           "(5) EMPLOYEES. Some or all of those persons  
22 employed and residing in Alabama:

23           "a. Who are being paid directly by an approved  
24 company, related company, common paymaster, joint venturer, or  
25 leasing company for working at a qualifying project;

26           "b. Whom the approved company, related company,  
27 common paymaster, joint venturer or leasing company identifies

1 as its employees to the U.S. Internal Revenue Service, the  
2 Department of Revenue, or the Department of Labor on returns  
3 or reports filed with the foregoing, including, but not  
4 limited to, IRS Form 941; and

5 "c. Who are assigned to a qualifying project for a  
6 period of at least one year.

7 "(6) INCENTIVE PERIOD. The period or periods of time  
8 during which an incentivized company can receive one or more  
9 of the jobs act incentives.

10 "(7) INCENTIVIZED COMPANY. An approved company and  
11 any related company that are allowed to claim one or more of  
12 the jobs act incentives as provided for in the project  
13 agreement.

14 "(8) INVESTMENT CREDIT. The annual incentive  
15 provided in Section 40-18-376.

16 "(9) JOBS ACT INCENTIVES. The jobs credit and the  
17 investment credit as authorized and provided for in this  
18 article.

19 "(10) JOBS CREDIT. The annual incentive provided in  
20 Section 40-18-375.

21 "(11) MEGAPROJECT. Any qualifying project which  
22 creates at least 500 employee positions or which makes a  
23 capital investment of \$100 million or greater, at a single  
24 site.

25 "~~(11)~~ (12) NAICS CODE. Any sector, subsector, industry  
26 group, industry or national industry of the 2012 North  
27 American Industry Classification System, or any similar

1 classification system developed in conjunction with the United  
2 States Department of Commerce or Office of Management and  
3 Budget.

4 "~~(12)~~(13) PROJECT. Any land, building, or other  
5 improvements, and all real and personal properties, whether or  
6 not contiguous and whether or not previously in existence, if  
7 in Alabama and if deemed necessary or useful in connection  
8 with an activity listed in Section 40-18-372(a).

9 "~~(13)~~(14) PROJECT AGREEMENT. The agreement entered  
10 into between an approved company and the Governor establishing  
11 the terms and conditions for the provision of the jobs act  
12 incentives, as provided for in Section 40-18-374.

13 "~~(14)~~(15) QUALIFYING PROJECT. Any project to be  
14 undertaken by an approved company that satisfies Section  
15 40-18-372.

16 "~~(15)~~(16) RELATED COMPANY. Any company that is under  
17 common ownership, management, or control with a company or an  
18 approved company, as the case may be.

19 "~~(16)~~(17) UTILITY TAXES. The taxes imposed by  
20 Sections 40-21-82 and 40-21-102.

21 "~~(17)~~(18) WAGES. Total wages of an employee  
22 (including gross wages, salaries, overtime and bonuses),  
23 defined by reference to Section 25-4-16(b), without  
24 application of Sections 25-4-16(b) (1), 25-4-16(b) (2)a.,  
25 25-4-16(b) (3), and 25-4-16(b) (4).

26 "§40-18-382.

1           "The incentives authorized by this article shall not  
2 be available for qualifying projects for which project  
3 agreements have not been executed on or prior to December 31,  
4 ~~2019~~ 2023, unless the Legislature, by joint resolution or  
5 other applicable action of both houses, votes to continue or  
6 reinstate the incentives for new projects after that date. No  
7 action or inaction on the part of the Legislature shall reduce  
8 or suspend any incentive awarded pursuant to this article in  
9 any past or future calendar year with respect to qualifying  
10 projects for which project agreements have been executed on or  
11 prior to December 31, ~~2019~~ 2023, it being the sole intention  
12 of this section that failure of the Legislature to adopt a  
13 joint resolution or other applicable action of both houses  
14 continuing the incentives authorized by this article for  
15 periods after December 31, ~~2019~~ 2023, shall affect only the  
16 availability of the incentives to qualifying projects for  
17 which project agreements have not been executed on or prior to  
18 December 31, ~~2019~~ 2023, and shall not affect qualifying  
19 projects for which project agreements have been executed on or  
20 prior to December 31, ~~2019~~ 2023.

21           "§40-18-383.

22           "(a) At no time shall the aggregate balance of  
23 outstanding jobs act incentives exceed \$850 million, unless  
24 the Legislature, by joint resolution or other applicable  
25 action of both houses, votes to allow additional jobs act  
26 incentives. Megaprojects, as defined in Section 40-18-370,



1       shall be exempt from the aggregate balance of outstanding jobs  
2       act incentives under this subsection.

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

6               Section 2. This act shall become effective  
7       immediately following its passage and approval by the  
8       Governor, or its otherwise becoming law.