

1 HB34
2 174393-6
3 By Representative McCutcheon
4 RFD: Ways and Means Education
5 First Read: 02-FEB-16
6 PFD: 01/29/2016

1 For the purposes of this article, the following
2 words and phrases shall have the following meanings:

3 (1) BASE CARGO VOLUME. The greater of the following:

4 a. One hundred five percent of the cargo volume of a
5 port facility user in the immediate prior year.

6 b. Ten TEUs, for cargo measured by TEU, or 75 net
7 tons, for cargo measured by net ton.

8 (2) CARGO VOLUME. The total amount of
9 noncontainerized general cargo or containers, measured in
10 TEUs, in net tons, or in kilograms, transported by way of a
11 waterborne ship, air cargo aircraft, or railroad through a
12 port facility; provided that such cargo shall be owned by the
13 port facility user at the time the port facility is used.

14 (3) COMMISSION. The Renewal of Alabama Commission
15 created by Section 40-18-402.

16 (4) COMPANY. Anyone or anything which has the powers
17 to conduct the activities required to claim the port credit.

18 (5) PORT FACILITY. Any publicly owned facility
19 located within this state's ports of entry through which cargo
20 is transported by way of a waterborne ship, air cargo
21 aircraft, or railroad, to or from destinations outside this
22 state and which handles cargo owned by third parties in
23 addition to cargo owned by the port facility's owner.

24 (6) PORT CREDIT. The credit provided for in Section
25 40-18-403.

1 (7) PORT FACILITY USER. A company engaged in
2 manufacturing, warehousing, or distribution which uses a port
3 facility.

4 (8) TEU. A "20-foot equivalent unit" volumetric
5 measure based on the size of a container 20 feet long by eight
6 feet wide by eight feet, six inches high.

7 §40-18-401.

8 (a) The port credit provided for in Section
9 40-18-403 is created by this article and is allowed upon
10 strict compliance with the provisions herein.

11 (b) Prior to the allowance of the port credit, an
12 application shall be filed with the commission, on a form
13 promulgated by the commission.

14 (1) The application shall be filed by the port
15 facility user desiring to claim the credit.

16 (2) The commission shall establish deadlines for
17 applications. Such applications shall solicit whatever
18 information the commission deems important to its
19 determination of whether granting a port credit will create
20 new, high paying jobs in the state, bring substantial capital
21 to the state, increase the usage of a port facility, promote
22 the development of clusters of businesses in the state, or
23 promote the economic development efforts of the state.

24 (3) Upon review of the applications, the commission
25 may approve such applications as shall result in port credits
26 being awarded so as not to exceed twelve million dollars

1 (\$12,000,000) for the life of the program, and shall not
2 exceed five million dollars (\$5,000,000) in a fiscal year.

3 (4) The commission shall charge application fees to
4 offset the costs of administration of this article.

5 (c) Prior to claiming a port credit, the company
6 shall submit to the Department of Commerce a certification
7 containing information adequate to prove that the company is
8 entitled to the credit. Following such examination as it deems
9 necessary, the Department of Commerce may certify the
10 information and deliver the same to the Department of Revenue.
11 Thereafter, the Department of Revenue shall allow the tax
12 credit.

13 (d) (1) Nothing in this article shall be construed to
14 constitute a guarantee or assumption by the state of any debt
15 of any company nor to authorize the credit of the state to be
16 given, pledged, or loaned to any company.

17 (2) Nothing in this article shall be construed to
18 make available to any company any right to the benefits
19 conferred by this article absent strict compliance with this
20 article.

21 (3) Nothing in this article shall be construed to
22 change or lessen the requirements for claiming jobs act
23 incentives under the Alabama Jobs Act, Section 40-18-370, et
24 seq. Companies claiming the jobs act incentives must strictly
25 comply with the Alabama Jobs Act.

26 (4) All filings made by a private party with the
27 commission or any department of state government shall be made

1 using forms adopted by the commission or department. Any such
2 filing shall be treated as a tax return, subject to penalties
3 imposed by the Department of Revenue.

4 (5) Nothing in this article shall be construed to
5 limit the powers otherwise existing for the Department of
6 Revenue to audit and assess any company claiming a port
7 credit.

8 §40-18-402.

9 (a) There is hereby created the Renewal of Alabama
10 Commission.

11 (b) The commission shall be comprised of all of the
12 following persons:

13 (1) The Finance Director, or his or her designee;

14 (2) The Secretary of Commerce, or his or her
15 designee;

16 (3) The Chair of the House Ways and Means Education
17 Committee, or its successor committee, if any, or his or her
18 designee;

19 (4) The Chair of the Senate Finance and Taxation
20 Education Committee, or its successor committee, if any, or
21 his or her designee;

22 (5) Three persons appointed by the Governor, at
23 least one of whom shall be a resident of an area of the state
24 the source of whose primary power supply is the Tennessee
25 Valley Authority or its lawfully authorized distributor;

26 (6) One person appointed by the Speaker of the
27 House; and

1 (7) One person appointed by the President Pro
2 Tempore of the Senate.

3 (c) All persons appointed to the commission shall
4 have one or more of the following qualifications:

5 (1) Members must be knowledgeable in the management
6 of money and finance;

7 (2) Members must have experience in international
8 trade; or

9 (3) Members must have experience as chief executive
10 officers, chief financial officers, or other executive level
11 management roles in businesses in this state which employ
12 Alabama residents.

13 (4) The commission shall be inclusive and reflect
14 the gender, racial, geographic, urban and rural, and economic
15 diversity of the state.

16 (d) No person appointed to the commission shall
17 serve a term longer than four years. Persons may serve
18 consecutive subsequent four-year terms.

19 (e) The Secretary of Commerce, or his or her
20 designee, shall be the chair of the commission and shall
21 preside over all meetings of the commission. The commission
22 may elect such other officers as it may find necessary or
23 desirable; provided that the commission shall have a board
24 secretary to keep minutes of its proceedings. No officer of
25 the commission other than the chair need be a member of the
26 commission.

1 (f) No member of the commission shall vote or
2 participate in any matter in which the member or a family
3 member of the member has any financial gain or interest.

4 (g) Members of the commission shall serve without
5 compensation.

6 (h) The commission shall meet at the call of the
7 chair or any majority of members thereof; provided that the
8 commission shall meet at least two times annually.

9 (i) The commission shall adopt its own rules of
10 procedure for the transaction of its business, and a majority
11 of the members present shall constitute a quorum for the
12 purpose of transacting or performing authorized duties.
13 Meetings of the commission are subject to Chapter 25A of Title
14 36. In order to balance the privacy needs of companies with
15 openness to the public, the commission may use code names in
16 its deliberations about various applicants and in the minutes
17 of its proceedings.

18 (j) The Department of Commerce shall provide
19 administrative and staffing support for the commission. The
20 Department of Revenue shall disclose to the commission
21 whatever information it may possess which would allow the
22 commission to fulfill this article; provided, however, that
23 such information shall only be disclosed and discussed in a
24 closed session. The Department of Revenue may require members
25 of the commission to execute confidentiality agreements before
26 the disclosure of information.

1 (k) The commission shall make an annual report on
2 the use of funds pursuant to this article. Such report shall
3 be made to the chair of the House Ways and Means Education
4 Committee, the chair of the Senate Finance and Taxation
5 Education Committee, and the members of the Joint Legislative
6 Advisory Committee on Economic Incentives established by
7 Section 40-18-379, at the times and in the manner requested by
8 the committee. Any publicly available version of the report
9 may redact information which the Department of Commerce
10 believes would place the state at a competitive disadvantage.

11 (l) The commission and the Department of Commerce
12 and Department of Revenue are authorized to adopt rules as
13 necessary to implement and administer the act.

14 (m) Members of the commission shall be public
15 officials for purposes of the ethics laws in Chapter 25 of
16 Title 36.

17 §40-18-403.

18 (a) If approved by the commission, a port credit is
19 allowed, in an amount equal to fifty dollars (\$50) per TEU,
20 three dollars (\$3) per net ton, or four cents (\$0.04) per
21 kilogram for air freight, multiplied by the following:

22 (1) The port user's cargo volume in the year for
23 which the commission has granted approval for the port user to
24 claim the port credit, minus

25 (2) The port user's base cargo volume.

26 (b) The commission shall decrease the amount of the
27 port credit to ensure that the anticipated revenues for the

1 port facility and state will exceed the amount of the port
2 credit sought. The port credit may be conditioned on whatever
3 requirements the commission shall impose. The port credits
4 shall only be available to the extent that a port facility
5 user ships more than 105 percent of its cargo volume from the
6 prior year. Moreover, the port credit shall only be available
7 to the extent a port facility user ships more than 10 TEUs,
8 for cargo measured by TEU, more than 75 net tons, for cargo
9 measured by net ton, or more than fifteen thousand (15,000)
10 kilograms for air cargo measured by kilograms.

11 (c) The following methods may be used to realize the
12 port credit:

13 (1) The port credit may offset the tax levied by
14 Chapter 18, but not below zero. The port credit may also
15 offset the estimated payments of the tax levied by Chapter 18,
16 but not below zero; provided that, in no event shall the port
17 credits be allowed to reduce any estimated payment of the tax
18 levied by Chapter 18 before October 1, 2016. In any one year,
19 if the port credit exceeds the amount of tax liability, the
20 port user may carry forward the unused port credit. No
21 carryforward shall be allowed for more than five years. Rules
22 similar to those used for Section 40-18-15.2 shall be applied.

23 (2) A company may assign and convey a port credit to
24 another company if substantially all of the assets of the
25 company are assigned and conveyed in the same transaction.
26 Proof of such transfer shall be submitted to the Department of
27 Revenue.

1 (d) To the extent that the port credit is utilized
2 by the port user or by a transferee company, no deduction for
3 the related expenses shall be allowed.

4 (e) For any company which enters into an economic
5 development project agreement with the state, the project
6 agreement may provide for an allocation to the company of any
7 port credits which have not been allocated pursuant to this
8 article. Allocations made pursuant to this subsection shall
9 meet all of the following requirements:

10 (1) Allocations shall be made by the Governor and
11 approved by the commission;

12 (2) Allocations for a project shall not exceed three
13 million dollars (\$3,000,000);

14 (3) Allocations shall be granted only to a new
15 warehouse or distribution facility which commits to investing
16 at least twenty million dollars (\$20,000,000) at a single site
17 and to creating 75 net new jobs in Alabama;

18 (4) Port credits may not be used until the
19 Department of Commerce has received satisfactory proof that
20 the capital investment and job creation requirements have been
21 satisfied;

22 (5) Any port credit granted by this procedure shall
23 not be granted for more than a 3-year period; and

24 (6) Allocations shall not exceed one hundred dollars
25 (\$100) per TEU, three dollars (\$3) per net ton, or four cents
26 (\$0.04) per kilogram for air freight.

1 (7) Anticipated revenues for the state shall exceed
2 the Port Credit granted, and the project agreement shall
3 provide for recapture of all or part of the Port Credit should
4 the company default on its obligations in the project
5 agreement.

6 Section 3. A new Article 19 of Chapter 18 of Title
7 40, is added to the Code of Alabama 1975, to read as follows:

8 Article 19.

9 §40-18-410.

10 For the purposes of this article, the following
11 words and phrases shall have the following meanings:

12 (1) GROWING ALABAMA CREDIT. The credit provided for
13 in Section 40-18-413(a).

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

17 (3) LOCAL ECONOMIC DEVELOPMENT ORGANIZATIONS.
18 Organizations which are determined by the Department of
19 Commerce to meet both of the following criteria:

20 a. The organization is an Alabama entity not
21 operating for a profit, including, but not limited to, an
22 industrial board or authority, a chamber of commerce, or some
23 other foundation or Alabama nonprofit corporation charged with
24 improving a community or region of the state; and

25 b. The organization has a record of supporting or
26 otherwise participating in economic development activities in
27 some part of Alabama.

1 (4) RENEWAL OF ALABAMA COMMISSION. The Renewal of
2 Alabama Commission created by Section 40-18-402.

3 (5) SITE. Real property owned by a local economic
4 development organization and intended for use by an industry
5 or business.

6 §40-18-411.

7 (a) A local economic development organization which
8 owns a site may apply to the Department of Commerce for
9 funding to solve an inadequacy involving the site. The
10 application by the local economic development organization
11 shall include one or both of the following:

12 (1) If there is a pending expression of interest
13 about the site from an industry or business, a list of the
14 site preparation or public infrastructure work needed to make
15 the site acceptable to the industry or business; or

16 (2) If the site has been offered to one or more
17 industries or businesses but the offer did not result in the
18 industry or business locating on the site, a list of the site
19 preparation or public infrastructure work which, if it had
20 been completed, would have made the site acceptable to the
21 industries or businesses.

22 (b) For any site preparation or public
23 infrastructure work listed in an application to the Department
24 of Commerce, the application shall include firm quotes for the
25 completion of such work.

26 (c) The application shall include an estimate of the
27 number of jobs, wages, and capital investment which would have

1 been undertaken by the industries or businesses referred to in
2 subsection (a).

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

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

13 §40-18-412.

14 (a) Following a review, if the Department of
15 Commerce should approve the application, it shall forward the
16 application to the Renewal of Alabama Commission.

17 (b) The Renewal of Alabama Commission shall consider
18 the application and shall approve it if it deems it worthy of
19 approval. Meetings of the commission are subject to Chapter
20 25A of Title 36; provided, however, that the commission may
21 meet by telephone or some other telecommunications device so
22 long as members of the public are allowed the opportunity to
23 listen to or otherwise observe the commission's deliberations.

24 (c) The approval of an application by the commission
25 shall specify the amount of money which the local economic
26 development organization is allowed to receive so that it can

1 complete the site preparation or public infrastructure work
2 specified in the application.

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

6 §40-18-413.

7 (a) A taxpayer is allowed a Growing Alabama Credit
8 to be applied against the tax levied by Chapter 18. In no
9 event shall the Growing Alabama Credit cause a taxpayer's
10 income tax liability to be reduced by more than 50 percent.
11 Unused credits may be carried forward for no more than five
12 years.

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

23 (c) In no event shall Growing Alabama Credits be
24 allowed in excess of five million dollars (\$5,000,000) for
25 fiscal year 2016. In no event shall Growing Alabama Credits be
26 allowed in excess of ten million dollars (\$10,000,000) per
27 year for fiscal years 2017, 2018, 2019, and 2020.

1 (d) The Renewal of Alabama Commission shall reserve
2 at least 25 percent of the amounts specified in subsection (c)
3 for projects in targeted counties described in Section
4 40-18-376.1.

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

15 §40-18-414.

16 (a) Upon receipt of funding provided by the tax
17 credit process in Section 40-18-413, the local economic
18 development organization shall proceed with the site
19 preparation or public infrastructure work that was specified
20 in the application required by Section 40-18-411.

21 (b) The local economic development organization
22 shall report to the Department of Commerce upon the completion
23 of the site preparation or public infrastructure work, upon
24 the transfer of the site to an industry or business, and at
25 other times as may be required or requested by the Department
26 of Commerce.

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

11 §40-18-415.

12 (a) All filings and applications made with any
13 department of the state government shall be made using forms
14 promulgated by such department. Any such filing shall be
15 treated as a tax return, subject to penalties imposed by the
16 Department of Revenue.

17 (b) Nothing in this article shall be construed to
18 constitute a guarantee or assumption by the state of any debt
19 of any company nor to authorize the credit of the state to be
20 given, pledged, or loaned to any company.

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

25 (d) Nothing in this article shall be construed to
26 limit the powers otherwise existing for the Department of

1 Revenue to audit and assess a taxpayer claiming the Growing
2 Alabama Credit.

3 (e) Nothing in this article shall be construed to
4 change or lessen the requirements for claiming jobs act
5 incentives under the Alabama Jobs Act in Article 16 of this
6 chapter. Companies claiming the jobs act incentives must
7 strictly comply with Article 16 of this chapter.

8 (f) The Department of Commerce and Department of
9 Revenue are authorized to adopt rules as necessary to
10 implement and administer this article.

11 §40-18-416.

12 This article shall be repealed following the close
13 of fiscal year 2020, but the repeal shall not cause a
14 reduction or suspension of any credits awarded for fiscal year
15 2020 or for prior years during which the Growing Alabama
16 Credit was in effect.

17 Section 4. If a court of competent jurisdiction
18 adjudges invalid or unconstitutional any clause, sentence,
19 paragraph, section, or part of this act, such judgment or
20 decree shall not affect, impair, invalidate, or nullify the
21 remainder of this act, but the effect of the decision shall be
22 confined to the clause, sentence, paragraph, section, or part
23 of this act adjudged to be invalid or unconstitutional.

24 Section 5. All laws or parts of laws which conflict
25 with this act are repealed.

1 Section 6. This act shall become effective 90 days
2 following its passage and approval by the Governor, or its
3 otherwise becoming a law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

16
17
18
19

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
Education..... 02-FEB-16

Read for the second time and placed
on the calendar with 1 substitute
and..... 24-FEB-16

Read for the third time and passed
as amended..... 25-FEB-16

Yeas 105, Nays 0, Abstains 0

Jeff Woodard
Clerk