

1 HB390
2 175246-1
3 By Representative Pringle
4 RFD: Technology and Research
5 First Read: 10-MAR-16

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8 SYNOPSIS: Under existing law, there are no economic
9 incentives or tax credits extended to Alabama
10 businesses for qualified research expenses incurred
11 by Alabama companies that spend funds and resources
12 in-house, or pay Alabama research companies to
13 conduct qualified research for new or improved
14 products or services.

15 This bill would establish the Alabama
16 Innovation Act that would provide for a research
17 and development tax credit to certain Alabama
18 companies modeled on the federal research and
19 development tax credit. The credit would be 25
20 percent of research at an Alabama research entity,
21 and 10 percent for other research conducted in
22 Alabama. The credit could be taken against the
23 income tax or the financial institution excise tax.

24 This bill would limit the Alabama Innovation
25 tax credits to no more than twenty-five million
26 dollars (\$25,000,000) of credits per year, and no
27 eligible company or business could claim more than

1 20 percent of the credits available in any year.
2 The credits would be claimed on a first-come,
3 first-served basis.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 Relating to research and development tax credits; to
10 add Article 17, commencing with Section 40-18-390, to Chapter
11 18 of Title 40 of the Code of Alabama 1975; to enact the
12 Alabama Innovation Act; to allow a research and development
13 tax credit for qualified research expenses in Alabama in the
14 amount of 25 percent of research at an Alabama research
15 entity, and 10 percent of other research in Alabama; to
16 provide that no more than twenty-five million dollars
17 (\$25,000,000) of tax credits would be allowed in any year, and
18 no one taxpayer would be allowed more than 20 percent of the
19 credits available in any year; to provide that earned but
20 unused credits could be carried forward for five years; to
21 require that the tax credit only apply to research falling
22 within certain industries; to provide for the promulgation of
23 rules; and to provide for the coordination between the
24 availability of the federal research credit and the credit
25 created by this act.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the Alabama Innovation Act.

3 Section 2. Article 17, commencing with Section
4 40-18-390, is added to Chapter 18 of Title 40 of the Code of
5 Alabama 1975, to read as follows:

6 Article 17. Alabama Innovation Act.

7 §40-18-390.

8 For the purpose of this article, the following words
9 shall have the following meanings:

10 (1) ALABAMA RESEARCH ENTITY. One or more of the
11 following:

12 a. A public or private university in the state.

13 b. A university research foundation affiliated with
14 a public or private university in the state.

15 c. A public two-year college in the state.

16 d. A publicly owned hospital in the state.

17 e. An entity duly formed, domiciled, or qualified to
18 do business in the state that meets each of the following
19 criteria:

20 1. Is exempt from federal income tax under Section
21 501(c)(3) of the Internal Revenue Code of 1986, as amended.

22 2. Is predominantly engaged in research and
23 non-commercial development activities undertaken for the
24 purpose of discovering information that is technological or
25 biotechnological in nature, involves a process of
26 experimentation, and the application of which is intended to

1 be used in the development of a new or improved product,
2 service, or treatment.

3 3. Has its headquarters and principal place of
4 business in the state.

5 4. Has, or is anticipated to have, at least 75
6 percent of its property and payroll in Alabama, using the
7 property and payroll factor calculations found in this title.

8 (2) APPROVED ACTIVITY. The conduct of an activity
9 that is predominantly any one or more of the activities
10 described in subdivision (1) of Section 40-18-372.

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

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

19 a. Consortium research expenses.

20 b. Expenses for research activities performed
21 outside Alabama.

22 (5) DEPARTMENT. The Alabama Department of Revenue.

23 (6) IN-HOUSE RESEARCH EXPENSES. The meaning given in
24 26 U.S.C. § 41(b)(2), but not including wages paid or incurred
25 to employees residing outside Alabama.

26 (7) QUALIFIED RESEARCH. The meaning given in 26
27 U.S.C. § 41(d), if conducted in Alabama in pursuit of an

1 approved activity. In applying any terms in 26 U.S.C. § 41,
2 the term shall have the meaning given herein.

3 §40-18-391.

4 (a) An innovation tax credit is allowed for
5 qualified research conducted in Alabama. The tax credit shall
6 be in an amount equal to the sum of the following:

7 (1) Ten percent of the in-house research expenses
8 and contract research expenses for qualified research
9 conducted in Alabama during the taxable year, minus 50 percent
10 of the in-house research expenses and contract research
11 expenses conducted in Alabama, on average, over the three
12 taxable years preceding the taxable year for which the credit
13 is being determined.

14 (2) Twenty-five percent of the consortium research
15 expenses for qualified research conducted in Alabama during
16 the taxable year, minus 50 percent of the consortium research
17 expenses conducted in Alabama, on average, over the three
18 taxable years preceding the taxable year for which the credit
19 is being determined.

20 (b) The tax credit may offset the taxes levied by
21 Chapter 16 and this chapter or as an estimated payment of the
22 tax levied by this chapter, but not below zero. In no event
23 shall the credits provided for by this article be allowed to
24 reduce any estimated payment of the taxes levied by this
25 chapter before October 1, 2016.

1 (c) All other state income tax credits shall be
2 applied prior to the application of the tax credit provided in
3 this section.

4 §40-18-392.

5 (a) (1) In any one year, if the innovation tax credit
6 exceeds the amount of tax liability, the taxpayer may carry
7 forward the unused tax credit. A carryforward shall not be
8 allowed for more than five years.

9 (2) The department shall promulgate rules similar to
10 those used for Section 40-18-15.2 that shall apply to this
11 section.

12 (b) A taxpayer may assign and convey a tax credit to
13 another entity if substantially all of the assets of the
14 taxpayer are assigned and conveyed in the same transaction.
15 Proof of such transfer shall be submitted to the department.

16 (c) (1) To the extent a tax credit under this article
17 is used to offset a financial institution excise tax
18 liability, in making the report required by subsection (d) of
19 Section 40-16-6, the financial institution receiving the
20 credit may not take into account the activity for which the
21 tax credit is given.

22 (2) The Department of Finance shall promulgate rules
23 to ensure that the credit in no case would reduce the
24 distribution for municipalities and counties.

25 (d) To the extent that the tax credit is utilized by
26 the taxpayer or by a transferee, no deduction for the related
27 expenses shall be allowed.

1 §40-18-393.

2 (a) The maximum amount of innovation tax credits all
3 taxpayers shall be allowed under Section 40-18-391 in any one
4 year shall be limited to twenty-five million dollars
5 (\$25,000,000), and no taxpayer shall receive an innovation tax
6 credit of more than 20 percent of the maximum amount awarded
7 in a single tax year. The tax credits shall be allocated among
8 various taxpayers using the procedures in this section.

9 (b) Each taxpayer wishing to claim a tax credit
10 shall file an application with the department showing the
11 amount of tax credit the taxpayer expects in good faith to
12 claim during the tax year. An application may not show an
13 expected claim in excess of 20 percent of the maximum amount
14 awarded in a single tax year. The applications shall be
15 submitted electronically to the department between March 15
16 and December 31, and the applications shall apply to the tax
17 year that begins during that same calendar year.

18 (c) As applications are submitted, the department
19 shall approve any applications the department deems
20 sufficient, until the total approved applications represent
21 twenty-five million dollars (\$25,000,000) of anticipated tax
22 credits. All applications received on the day that the
23 twenty-five million dollar (\$25,000,000) limit is reached
24 shall receive approval for a pro rata share of the credits
25 available at the start of that day. To the extent that the
26 applications are not approved, the portion not approved shall
27 be conditionally denied by the department. Taxpayers may

1 continue to submit applications after the twenty-five million
2 dollar (\$25,000,000) cap is reached, and applications that the
3 department deems sufficient shall be conditionally denied but
4 maintained in the order received.

5 (d) As tax returns for the corresponding tax year
6 are submitted, if they show that approved tax credits are not
7 actually claimed for use in the current or a carryforward
8 year, the department shall approve, in the order they were
9 received, the applications that were conditionally denied
10 until the approved applications represent twenty-five million
11 dollars (\$25,000,000) of anticipated tax credits. The
12 department shall notify the benefitting taxpayers and allow
13 them a reasonable period of time to make filings taking
14 advantage of the tax credits.

15 (e) The calculations required to be made by the
16 department shall be based on the initial returns filed by
17 taxpayers who had tax credits approved. No taxpayer may amend
18 a return to claim an approved innovation tax credit that was
19 not claimed on its initial filed return, unless the amendment
20 is to claim a credit conditionally denied.

21 §40-18-394.

22 (a) All filings made by a private party with any
23 department of the state government shall be made using forms
24 promulgated by the department. Any such filing shall be
25 treated as a tax return, subject to penalties imposed by the
26 Department of Revenue.

1 (b) Nothing in this article shall be construed to
2 make available to any taxpayer any right to the benefits
3 conferred by this article absent strict compliance with this
4 article.

5 (c) The Department of Commerce and the Department of
6 Revenue are authorized to promulgate rules as necessary to
7 implement and administer this article.

8 (d) This article shall be construed generally to
9 conform to 26 U.S.C. § 41, except for percentage reductions
10 specified therein. In the event that credits under 26 U.S.C. §
11 41 are not allowed in any year, the credit provided in this
12 article shall refer to 26 U.S.C. § 41, as it existed on the
13 last day that it was allowed.

14 Section 3. All laws or parts of laws which conflict
15 with this act are repealed.

16 Section 4. This act shall become effective on
17 January 1, 2017, following its passage and approval by the
18 Governor, or its otherwise becoming law.