

1 HB304
2 165935-1
3 By Representatives Williams (P) and Ball
4 RFD: Technology and Research
5 First Read: 17-MAR-15

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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 new research at an Alabama research
21 entity, and 5 percent for other new research
22 conducted in Alabama. The credit could be taken
23 against the income tax or the financial institution
24 excise tax.

25 This bill would limit the Alabama Innovation
26 tax credits to no more than \$10 million of credits
27 per year, and no eligible company or business could

1 claim more than \$2 million of credits. The credits
2 would be claimed on a first-come, first-served
3 basis.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 To enact the Alabama Innovation Act; to allow a
10 research and development tax credit for qualified research
11 expenses in Alabama in the amount of 25 percent of new
12 research at an Alabama research entity, and 5 percent of other
13 research in Alabama; to provide that no more than \$10 million
14 of tax credits would be allowed in any year, and no one
15 taxpayer would be allowed more than \$2 million of tax credits
16 in any year; to allow the credits to offset the taxes in
17 Chapters 16 and 18 of Title 40, Code of Alabama 1975, and
18 estimated payments thereof; to provide that the income tax
19 credits shall not affect estimated income tax payments before
20 October 1, 2016; to provide that earned but unused credits
21 could be carried forward for 5 years; to provide for the
22 distribution of the financial institution excise tax when the
23 credit is claimed; to create an allocation system; to provide
24 that economic development project agreements entered into with
25 the state could allocate to the project tax credits which had
26 not yet been allocated and could provide for transferability
27 of the tax credits; and to provide that tax credits shall not

1 be considered securities; to provide for proof that incentives
2 are due to be granted; to provide for the promulgation of
3 forms for information to be submitted to a department of state
4 government, and that such submissions shall be treated as tax
5 returns; to provide that no taxpayer shall have any right to
6 credits that are granted absent strict compliance with this
7 act; to require that the tax credit only apply to research
8 falling within certain industries; to create a new Article 17
9 of Chapter 18 of Title 40, Code of Alabama 1975; to provide
10 for the promulgation of regulations; to provide for the
11 coordination between the availability of the federal research
12 credit and the credit herein; to provide for the severability
13 of invalid provisions; to provide for the repeal of
14 conflicting laws; 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 Innovation Act".

18 Section 2. A new Article 17 of Chapter 18 of Title
19 40, Code of Alabama 1975, is created to read as follows:

20 § 40-18-390. For the purpose of this article, the
21 following words and phrases shall have the following meanings:

22 (a) ALABAMA RESEARCH ENTITY. One or more of the
23 following:

- 24 (1) A public or private university in the state;
25 (2) A university research foundation affiliated with
26 a public or private university in the state;
27 (3) A public two-year college in the state;

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

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

5 a. Is exempt from federal income tax under section
6 501(c)(3) of the Internal Revenue Code of 1986, as amended;

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

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

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

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

21 (1) Described by NAICS Code 1133, 115111, 2121,
22 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482,
23 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493,
24 511, 5121 (other than 51213), 51221, 517, 518 (without regard
25 to the premise that data processing and related services be
26 performed in conjunction with a third party), 51913, 52232,
27 54133 (if predominantly in furtherance of another activity

1 described in this article), 54134 (if predominantly in
2 furtherance of another activity described in this article),
3 54138, 5415, 541614, 5417, 55 (if not for the production of
4 electricity), 561422 (other than establishments that originate
5 telephone calls), 562213, 56291, 56292, 611512, 927 or 92811.

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

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

10 a. The Accelerate Alabama Strategic Economic
11 Development Plan adopted in January 2012 by the Alabama
12 Economic Development Alliance, created by Executive Order
13 Number 21 of the Governor on July 18, 2011, or any amended
14 version or successor document thereto or

15 b. A type listed in a regulation adopted by the
16 Department of Commerce.

17 Notwithstanding the foregoing, an approved activity
18 shall not predominantly include farming activities involving
19 trees, animals or crops or the retail sale of tangible
20 personal property or services. This provision shall not be
21 deemed to exclude customer service centers, call centers or
22 headquarters otherwise allowed as an approved activity.

23 (c) CONSORTIUM RESEARCH EXPENSES. Any amount paid or
24 incurred by the taxpayer to any Alabama research entity for
25 qualified research, but not including any expenses for
26 research activities performed outside Alabama.

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

5 (1) Consortium research expenses; or

6 (2) Expenses for research activities performed
7 outside Alabama.

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

9 (f) IN-HOUSE RESEARCH EXPENSES. The meaning given in
10 26 U.S.C. § 41(b)(2), but not including wages paid or incurred
11 to employees residing outside Alabama.

12 (g) NAICS CODE. Any sector, subsector, industry
13 group, industry or national industry of the 2012 North
14 American Industry Classification System, or any similar
15 classification system developed in conjunction with the United
16 States Department of Commerce or Office of Management and
17 Budget.

18 (h) QUALIFIED RESEARCH. The meaning given in 26
19 U.S.C. § 41(d), if conducted in Alabama in pursuit of an
20 approved activity.

21 In applying any terms in 26 U.S.C. § 41, "qualified
22 research" shall have the meaning given herein.

23 § 40-18-391.

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

27 (1) 5 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. In-house research expenses and contract research
5 expenses conducted in Alabama, on average, over the 3 taxable
6 years preceding the taxable year for which the credit is being
7 determined.

8 (2) 25 percent of the following:

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

11 b. 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 tax credit may offset the taxes levied by
15 Chapters 16 and 18, or as an estimated payment of the tax
16 levied by Chapter 18, but not below zero. In no event shall
17 the credits provided for by this article be allowed to reduce
18 any estimated payment of the taxes levied by Chapter 18 before
19 October 1, 2016.

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

23 § 40-18-392.

24 (a) In any one year, if the innovation tax credit
25 exceeds the amount of tax liability, the taxpayer may carry
26 forward the unused tax credit. No carryforward shall be

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

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

7 (c) To the extent a tax credit under this Article is
8 used to offset a financial institution excise tax liability,
9 in making the report required by Section 40-16-6(d), the
10 financial institution receiving the credit shall not take into
11 account the activity for which the tax credit is given, and
12 the Department of Finance shall promulgate regulations to
13 ensure that the credit in no case would reduce the
14 distribution for municipalities and counties.

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

18 § 40-18-393. The maximum amount of innovation tax
19 credits all taxpayers shall be allowed under Section 40-18-391
20 in any one year shall be limited to \$10 million, and no
21 taxpayer shall receive an innovation tax credit of more than
22 \$2,000,000 in a single tax year. The tax credits shall be
23 allocated among various taxpayers using the procedures in this
24 section.

25 (a) Each taxpayer who wishes to claim a tax credit
26 shall file an application with the department showing the
27 amount of tax credit which the taxpayer expects in good faith

1 to claim during the tax year. No application shall show an
2 expected claim in excess of \$2 million. The applications shall
3 be submitted electronically to the department between March 15
4 and December 31, and such applications shall apply to the tax
5 year that begins during that same calendar year.

6 (b) As applications are submitted, the department
7 shall approve any the department deems sufficient, until the
8 total approved applications represent \$10 million of
9 anticipated tax credits. All applications received on the day
10 that the \$10 million limit is reached shall receive approval
11 for a pro rata share of the credits available at the start of
12 that day. To the extent that the applications are not
13 approved, the portion not approved shall be conditionally
14 denied by the department. Taxpayers may continue to submit
15 applications after the \$10 million cap is reached, and
16 applications that the department deems sufficient shall be
17 conditionally denied but maintained in the order received.

18 (c) As tax returns for the corresponding tax year
19 are submitted, if they show that approved tax credits are not
20 actually claimed for use in the current or a carryforward
21 year, the department shall approve, in the order they were
22 received, the applications that were conditionally denied
23 until the approved applications represent \$10 million of
24 anticipated tax credits.

25 (d) The calculations required to be made by the
26 department shall be based on the initial returns filed by
27 taxpayers who had tax credits approved. No taxpayer may amend

1 a return to claim an approved innovation tax credit which was
2 not claimed on its initial filed return, unless such amendment
3 is to claim a credit conditionally denied.

4 § 40-18-394. For any taxpayer that enters into an
5 economic development project agreement with the state, the
6 following shall apply:

7 (a) For any innovation tax credits which have not
8 yet been allocated for the current or a future year pursuant
9 to Section 40-18-393, the project agreement may provide for an
10 allocation of innovation tax credits to the taxpayer, to the
11 extent otherwise in compliance with this article. No such
12 allocation of innovation tax credits shall be subject to the
13 proration provided for in Section 40-18-393(b).

14 (b) The project agreement may provide that any
15 innovation tax credits may be transferred to another taxpayer,
16 in addition to the transfer rights provided by Section
17 40-18-392(b). In that event, the transferee may apply the tax
18 credit to offset the taxes levied by Chapters 16 and 18, but
19 not below zero. The following provisions shall apply:

20 (1) Section 40-18-392 shall apply to the transferee.

21 (2) A transfer shall not be allowed unless the
22 taxpayer and the transferee are both subject to the tax levied
23 by Chapter 16, or are both subject to the tax levied by
24 Chapter 18.

25 (3) A transfer of the tax credit shall be made by
26 written, notarized contract.

1 (4) Upon review of the contract and submission of
2 other information required by the Department of Commerce, the
3 Secretary of Commerce may issue a certificate of
4 transferability and deliver the same to the department.

5 (5) At the conclusion of each year for which a tax
6 credit is permitted to be transferred, the taxpayer shall
7 certify to the department the amount of tax credit to which it
8 is entitled. If the taxpayer is found to have transferred more
9 than that amount, the taxpayer shall be liable for the
10 underpayment of tax attributable to the tax credit and for
11 penalties and interest thereon. Unless the purchase of the tax
12 credit is determined to have been made in a fraudulent manner,
13 or is a transfer in anticipation of bankruptcy, insolvency or
14 closure, a transferee shall not be liable for the unpaid tax
15 attributable to the tax credit, or for penalties or interest
16 thereon.

17 (6) A transferee may not make a subsequent transfer
18 of the credit.

19 (7) Tax credits shall not be considered securities
20 under Section 8-6-2(10).

21 § 40-18-395.

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 such 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 Departments of Commerce and Revenue are
6 authorized to promulgate regulations as necessary to implement
7 and administer the provisions of this article. This article
8 shall be construed generally to conform to 26 U.S.C. § 41,
9 except for percentage reductions specified therein. In the
10 event that 26 U.S.C. § 41 should not be allowed in any year,
11 the credit provided in this article shall refer to 26 U.S.C. §
12 41, as it existed on the last day that it was allowed.

13 Section 3. If a court of competent jurisdiction
14 adjudges invalid or unconstitutional any clause, sentence,
15 paragraph, section, or part of this act, such judgment or
16 decree shall not affect, impair, invalidate, or nullify the
17 remainder of this act, but the effect of the decision shall be
18 confined to the clause, sentence, paragraph, section, or part
19 of this act adjudged to be invalid or unconstitutional.

20 Section 4. All laws or parts of laws which conflict
21 with this act are repealed.

22 Section 5. This act shall become effective on
23 January 1, 2016, following its passage and approval by the
24 Governor, or its otherwise becoming law.