

1 HB427  
2 157731-1  
3 By Representative Scott  
4 RFD: Ways and Means Education  
5 First Read: 06-FEB-14

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8 SYNOPSIS: Under existing law the term "Private User"  
9 does not include a nonprofit corporation that is or  
10 will be treated as the owner of private use  
11 industrial property for federal income tax  
12 purposes.

13 This bill would further expand the  
14 definition of the term "Private User" to include a  
15 nonprofit corporation that is or will be treated as  
16 the owner of private use industrial property for  
17 federal income tax purposes.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT  
22

23 To amend Section 40-9B-3 of the Code of Alabama  
24 1975, to further expand the defition of the term "Private  
25 User" to include a nonprofit corporation that is or will be  
26 treated as the owner of private use industrial property for  
27 federal income tax purposes.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 40-9B-3 of the Code of Alabama  
3 1975, is amended to read as follows:

4 "§40-9B-3.

5 "(a) For purposes of this chapter, the following  
6 words and phrases mean:

7 "(1) ABATE, ABATEMENT. A reduction or elimination of  
8 a taxpayer's liability for tax or payments required to be made  
9 in lieu thereof. An abatement of transaction taxes imposed  
10 under Chapter 23 of this title, or payments required to be  
11 made in lieu thereof, shall relieve the seller from the  
12 obligation to collect and pay over the transaction tax as if  
13 the sale were to a person exempt, to the extent of the  
14 abatement, from the transaction tax.

15 "(2) ALTERNATIVE ENERGY RESOURCES. The definition  
16 given in Section 40-18-1.

17 "(3) CONSTRUCTION RELATED TRANSACTION TAXES. The  
18 transaction taxes imposed by Chapter 23 of this title, or  
19 payments required to be made in lieu thereof, on tangible  
20 personal property and taxable services incorporated into an  
21 industrial development property, the cost of which may be  
22 added to capital account with respect to the property,  
23 determined without regard to any rule which permits  
24 expenditures properly chargeable to capital account to be  
25 treated as current expenses.

26 "(4) DATA PROCESSING CENTER. An establishment at  
27 which not less than 20 new jobs are located, the average

1 annual total compensation, including benefits, of such new  
2 jobs to be not less than forty thousand dollars (\$40,000) and  
3 such establishment is engaged in the provision of complete  
4 processing and specialized reports from data, the provision of  
5 automated data processing and data entry services, the  
6 provision of an infrastructure for hosting or data processing  
7 services, the provision of specialized hosting activities, the  
8 provision of application service provisioning, the provision  
9 of general time-share mainframe facilities, or some  
10 combination of the foregoing, without regard to whether any  
11 other activities are conducted at the establishment.

12 "(5) EDUCATION TAXES. Ad valorem taxes, or payments  
13 required to be made in lieu thereof, that must, pursuant to  
14 the Constitution of Alabama of 1901, as amended, legislative  
15 act, or the resolution or other action of the governing board  
16 authorizing the tax, be used for educational purposes or for  
17 capital improvements for education and local construction  
18 related transaction taxes levied for educational purposes or  
19 for capital improvements for education.

20 "(6) HEADQUARTERS FACILITY. Any trade or business  
21 described in the 2007 North American Industry Classification  
22 System, promulgated by the Executive Office of the President  
23 of the United States, Office of Management and Budget,  
24 National Industry 551114, at which not less than 50 new jobs  
25 are located.

26 "(7) HYDROPOWER PRODUCTION. The definition given in  
27 Section 40-18-1.

1           "(8) INDUCEMENT. Refers to an agreement, or an  
2 "inducement agreement," entered into between a private user  
3 and a public authority or county or municipal government  
4 and/or a resolution or other official action, an "inducement  
5 resolution," "inducement letter," or "official action" adopted  
6 by a public authority or county or municipal government, in  
7 each case expressing, among other things, the present intent  
8 of such public authority or county or municipal government to  
9 issue bonds in connection with the private use property  
10 therein described.

11           "(9) INDUSTRIAL DEVELOPMENT PROPERTY. Real and/or  
12 personal property acquired in connection with establishing or  
13 expanding an industrial or research enterprise in Alabama.

14           "(10) INDUSTRIAL OR RESEARCH ENTERPRISE.

15           "a. Any trade or business described in the 2007  
16 North American Industry Classification System, promulgated by  
17 the Executive Office of the President of the United States,  
18 Office of Management and Budget, Sectors 31 (other than  
19 National Industry 311811), 32, and 33; Subsectors 423, 424,  
20 493 where the trade or business will (i) provide logistics  
21 services related to the distribution of goods, (ii) employ 50  
22 or more persons within the first two years after being placed  
23 in service, and (iii) involve a capital investment of at least  
24 five million dollars (\$5,000,000), except that the investment  
25 in a trade or business located in a favored geographic area,  
26 as that term is defined in Section 40-18-190(a)(6), must  
27 exceed one million dollars (\$1,000,000), 511, and 927;

1 Industry Groups 2121, 5417, 5415, and 5182 (without regard to  
2 the premise that data processing and related services be  
3 performed in conjunction with a third-party); Industries 11331  
4 and 48691; and National Industries 115111, 517110, 541380, and  
5 561422 (other than establishments that originate telephone  
6 calls) and includes such trades and businesses as may be  
7 hereafter added by an act of the Legislature, reclassified in  
8 any subsequent publication of the North American Industry  
9 Classification System or other industry classification system  
10 developed in conjunction with the United States Department of  
11 Commerce, or any process or treatment facility which recycles,  
12 reclaims, or converts any materials, which include solids,  
13 liquids, or gases, to a reusable product.

14 "b. With respect to abatements granted in accordance  
15 with Section 40-9B-9, and only with respect to such  
16 abatements, "industrial or research enterprise" means any  
17 trade or business described in the 2007 North American  
18 Industry Classification System within Subsector 493  
19 (Warehousing and Storage), Industry Number 488310 (Port and  
20 Harbor Operations), or Industry Number 488320 (Marine Cargo  
21 Handling), when such trade or business is conducted on  
22 premises in which the Alabama State Port Authority has an  
23 ownership, leasehold, or other possessory interest and such  
24 premises are used as part of the operations of the Alabama  
25 State Port Authority.

26 "c. "Industrial or research enterprise" includes the  
27 above-described trades and business and any others as may

1 hereafter be reclassified in any subsequent publication of the  
2 NAICS or similar industry classification system developed in  
3 conjunction with the United States Department of Commerce or  
4 Office of Management and Budget.

5 "d. "Industrial or research enterprise" also  
6 includes any underground natural gas storage facility which is  
7 located in the Gulf Opportunity Zone, as that phrase is  
8 defined in the Gulf Opportunity Zone Act of 2005, developed  
9 from existing geologic reservoirs, including, without  
10 limitation, salt domes, and placed in service on or before  
11 December 31, 2013.

12 "e. "Industrial or research enterprise" also  
13 includes any plant, property, or facility that meets both of  
14 the following:

15 "1. It produces electricity from:

16 "(i) Alternative energy resources and has capital  
17 costs of at least one hundred million dollars (\$100,000,000);  
18 or

19 "(ii) Hydropower production and has capital costs of  
20 at least five million dollars (\$5,000,000).

21 "2. All or a portion of the plant, property, or  
22 facility is owned by one or more of the following: A utility  
23 described in Section 37-4-1(7)a., an entity organized under  
24 the provisions of Chapter 6 of Title 37, or an authority both  
25 organized and existing pursuant to the provisions of Chapter  
26 50A of Title 11 and subject to the payments required to be  
27 made in lieu of ad valorem, sales, use, license, and severance

1 taxes imposed by Section 11-50A-7, or an entity in which one  
2 or more of the foregoing owns an interest.

3 "f. "Industrial or research enterprise" also  
4 includes any headquarters facility.

5 "g. "Industrial or research enterprise" also  
6 includes any data processing center.

7 "h. "Industrial or research enterprise" also  
8 includes any research and development facility.

9 "i. "Industrial or research enterprise" also  
10 includes any renewable energy facility.

11 "j. "Industrial or research enterprise" also  
12 includes any tourism destination attraction.

13 "(11) MAJOR ADDITION. Any addition to an existing  
14 industrial development property that equals the lesser of: 30  
15 percent of the original cost of the industrial development  
16 property or two million dollars (\$2,000,000). For purposes of  
17 this subsection, the original cost of existing industrial  
18 development property shall be the amount of industrial  
19 development property with respect to which an abatement was  
20 granted under this chapter when the property was constructed,  
21 or if the existing industrial development property was  
22 constructed before January 1, 1993, the maximum amount that  
23 would have been allowed if the provisions of this chapter had  
24 applied at the time it was constructed. Only property that  
25 constitutes industrial development property shall be taken  
26 into account in making the determination in the previous  
27 sentence. Major addition shall include any addition costing at

1 least two million dollars (\$2,000,000) which constitutes an  
2 industrial or research enterprise, regardless of whether added  
3 to an existing industrial development property.

4 "(12) MAXIMUM EXEMPTION PERIOD. Except as provided  
5 in Section 40-9B-11, either

6 "a. A period equal to the shorter of:

7 "1. Ten years from and after: (i) The date of  
8 initial issuance by a county, city, or public authority of  
9 bonds to finance any costs of a private use property, or (ii)  
10 If no such bonds are ever issued, the later of: A. The date on  
11 which title to the property was acquired by or vested in the  
12 county, city, or public authority, or B. The date on which the  
13 property is or becomes owned, for federal income tax purposes,  
14 by a private user; or

15 "2. The weighted average economic life of the assets  
16 comprising such property, determined consistently with the  
17 provisions of 26 U.S.C. § 147(b) and measured from the date  
18 such property is placed in service; or

19 "b. Exclusively with respect to a private user of a  
20 data processing center, (i) a period of 10 years from and  
21 after the date on which private use property is or becomes  
22 owned, for federal income tax purposes, by such private user,  
23 if the aggregate capital investment in the data processing  
24 center by the private user does not exceed \$200,000,000 within  
25 10 years from the date on which the private user commences the  
26 acquisition, construction, and equipping of the data  
27 processing center, (ii) a period of 20 years from and after

1 the date on which private use property is or becomes owned,  
2 for federal income tax purposes, by such private user, if the  
3 aggregate capital investment in the data processing center by  
4 the private user exceeds \$200,000,000 but is not greater than  
5 \$400,000,000 within 10 years from the date on which the  
6 private user commences the acquisition, construction, and  
7 equipping of the data processing center, or (iii) a period of  
8 30 years from and after the date on which private use property  
9 is or becomes owned, for federal income tax purposes, by such  
10 private user, if the aggregate capital investment in the data  
11 processing center by the private user exceeds \$200,000,000  
12 within 10 years from the date on which the private user  
13 commences the physical work of constructing and equipping the  
14 data processing center and exceeds \$400,000,000 within 20  
15 years from the date on which the private user commences the  
16 acquisition, construction, and equipping of the data  
17 processing center. For purposes of this paragraph b., a  
18 private user's aggregate capital investment in a data  
19 processing center shall include all real and personal property  
20 comprising a data processing center, the costs of which may be  
21 capitalized for federal income tax purposes. In no event shall  
22 abatements of construction related transaction taxes or  
23 noneducational ad valorem taxes granted for a data processing  
24 center apply beyond the expiration of the applicable maximum  
25 exemption period.

26 "(13) MORTGAGE AND RECORDING TAXES. The taxes  
27 imposed by Chapter 22 of this title.

1           "(14) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem  
2 taxes, or payments required to be made in lieu thereof,  
3 imposed by the state, counties, municipalities, and other  
4 taxing jurisdictions of Alabama that are not required to be  
5 used for educational purposes or for capital improvements for  
6 education.

7           "(15) PERSON. Includes any individual, partnership,  
8 trust, estate, or corporation.

9           "(16) PRIVATE USER. Any individual, partnership, or  
10 corporation organized for profit that is or will be treated as  
11 the owner of private use property for federal income tax  
12 purposes, any entity organized under Chapter 6 of Title 37,  
13 and any authority both organized and existing pursuant to  
14 Chapter 50A of Title 11 and subject to the payments required  
15 to be made in lieu of ad valorem, sales, use, license, and  
16 severance taxes imposed by Section 11-50A-7. Solely with  
17 respect to a tourism destination attraction, a "private user"  
18 also includes a nonprofit corporation that is or will be  
19 treated as the owner of private use industrial property for  
20 federal income tax purposes.

21           "(17) PRIVATE USE INDUSTRIAL PROPERTY. Private use  
22 property that also constitutes industrial development  
23 property.

24           "(18) PRIVATE USE PROPERTY. Any real and/or personal  
25 property which is or will be treated as owned by a private  
26 user for federal income tax purposes even though title may be  
27 held by a public authority or municipal or county government;

1 any real and/or personal property which is owned by any entity  
2 organized under Chapter 6 of Title 37; and any real and/or  
3 personal property which is owned by any authority both  
4 organized and existing pursuant to Chapter 50A of Title 11,  
5 and subject to the payments required to be made in lieu of ad  
6 valorem, sales, use, license, and severance taxes imposed by  
7 Section 11-50A-7.

8 "(19) PUBLIC AUTHORITY. A corporation created for  
9 public purposes pursuant to a provision of the Constitution of  
10 Alabama of 1901, or a general or local law that authorized it  
11 to issue bonds, the interest on which is exempt from the  
12 Alabama income tax, as in effect on May 21, 1992.

13 "(20) PUBLIC INDUSTRIAL AUTHORITY. A public  
14 authority authorized to issue bonds to acquire, construct,  
15 equip, or finance industrial development property.

16 "(21) RENEWABLE ENERGY FACILITY. Any plant,  
17 property, or facility that either:

18 "a. Produces electricity or natural gas, in whole or  
19 in part, from biofuels as such term is defined in Section  
20 2-2-90(c)(2) or from renewable energy resources as such term  
21 is defined in Section 40-18-1(30) with the exception that  
22 hydropower production shall be excluded from such definition;  
23 or

24 "b. Produces biofuel as such term is defined in  
25 Section 2-2-90(c)(2).

26 "(22) RESEARCH AND DEVELOPMENT FACILITY. An  
27 establishment engaged in conducting original investigations

1 undertaken on a systematic basis to gain new knowledge or  
2 applying research findings or other scientific knowledge to  
3 create new or significantly improved products or processes, or  
4 both.

5 "(23) STATEMENT OF INTENT. A written statement of  
6 intent to claim an abatement provided in this chapter, or to  
7 petition for local tax abatement, relating to an industrial or  
8 research enterprise described in paragraph e. of subdivision  
9 (10) of this subsection that is filed with the Department of  
10 Revenue at any time prior to the date on which the industrial  
11 or research enterprise described in paragraph e. of  
12 subdivision (10) of this subsection is placed in service in  
13 accordance with such procedures and on such form or forms as  
14 may be prescribed by the Department of Revenue. Such statement  
15 of intent shall contain a description of the industrial or  
16 research enterprise described in paragraph e. of subdivision  
17 (10) of this subsection; the date on which the acquisition,  
18 construction, installation, or equipping of the industrial or  
19 research enterprise described in paragraph e. of subdivision  
20 (10) of this subsection was commenced or is expected to  
21 commence; the actual or, if not known, the estimated capital  
22 costs of the industrial or research enterprise described in  
23 paragraph e. of subdivision (10) of this subsection; the  
24 number of new employees to be employed at the industrial or  
25 research enterprise described in paragraph e. of subdivision  
26 (10) of this subsection; and any other information required by  
27 the Department of Revenue.

1           "(24) TOURISM DESTINATION ATTRACTION. A commercial  
2 enterprise which is open to the public not less than 120 days  
3 during a calendar year and is designed to attract visitors  
4 from inside or outside of the State of Alabama, typically for  
5 its inherent cultural value, historical significance, natural  
6 or man-made beauty, or entertainment or amusement  
7 opportunities. The term shall include, but not be limited to,  
8 a cultural or historical site; a botanical garden; a museum; a  
9 wildlife park or aquarium open to the public that cares for  
10 and displays a collection of animals or fish; an amusement  
11 park; a convention hotel and conference center; a water park;  
12 or a spectator venue or arena.

13           "A tourism destination attraction shall not include  
14 a facility primarily devoted to the retail sale of goods; a  
15 shopping center; a restaurant; a movie theater; a bowling  
16 alley; a fitness center; a miniature golf course; or a  
17 nightclub. Provided, however, that the capital costs of the  
18 construction of a tourism destination attraction may include  
19 the capital costs associated with the construction of any  
20 retail establishment, restaurant or other portion of the  
21 tourism destination attraction. The term also does not include  
22 any gaming facility or establishment that the Secretary of the  
23 Department of Commerce deems to be serving the local  
24 community.

25           "(b) The abatements of ad valorem taxes, and  
26 payments in lieu thereof, allowed by amendments to this  
27 section by Act 2008-275 shall become effective for projects

1 for which statements of intent are filed after December 31,  
2 2011. No ad valorem taxes, or payments in lieu thereof, shall  
3 be abated for periods prior to January 1, 2012. The other  
4 abatements allowed by amendments made to this section by Act  
5 2008-275 shall become effective after December 31, 2011.

6 "For a qualifying industrial or research enterprise  
7 described in Section 40-9B-3(a)(10)j., the approval of the  
8 abatement of a specified ad valorem tax or construction  
9 related tax levied or imposed by a county or municipality, or  
10 payments required to be made in lieu thereof, shall take  
11 effect only upon adoption of a resolution by the governing  
12 body of that county or municipality approving such abatement  
13 or abatements."

14 Section 2. This act shall become effective on the  
15 first day of the third month following its passage and  
16 approval by the Governor, or its otherwise becoming law.