

1 HB140  
2 133693-6  
3 By Representatives Hammon, Bridges, Moore (B), Lee, Shiver,  
4 Chesteen, Weaver, Henry, Long, Gaston, Brown, Wood, Millican,  
5 McMillan, Williams (D), Johnson (W), Collins, Nordgren,  
6 Williams (J), Roberts, Wren, Wallace, Buttram, Fincher, Rich,  
7 Patterson, Vance, Clouse, Sanderford, McCutcheon and Ball  
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ENROLLED, An Act,

To amend Section 40-18-194, Code of Alabama 1975, relating to an income tax capital credit for qualifying projects of new businesses and business expansions; to allow for an extension of the time period in which certain capital credits may be claimed and will also allow the credit to be carried forward from one (1) to four (4) years depending upon the amount of the capital costs of the project.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-18-194, Code of Alabama 1975, is amended to read as follows:

"§40-18-194.

(a) The Legislature recognizes that a substantial number of businesses are organized as limited liability companies, partnerships, and other types of business entities and that certain business entities, organized as corporations, elect to be treated as "S" corporations under federal and state tax laws, and that it is essential that the capital credit amount shall be available on a pass-through basis in the manner hereinafter provided.

(b) Each investing company, or its shareholders, partners, members, owners, or beneficiaries shall be entitled to the capital credit for each tax year of an investing company with respect to which a capital credit is provided

1 pursuant to this article. The capital credit shall be allowed  
2 as follows:

3 (1) The owner of an investing company which is a  
4 proprietorship shall receive a credit against the individual  
5 income tax levied by Section 40-18-5 that otherwise would be  
6 owed to the state in any year by the owner with respect to the  
7 income of the investing company generated by or arising out of  
8 the qualifying project.

9 (2) An investing company which is an Alabama C  
10 corporation as defined in Section 40-18-160, or which is an  
11 Alabama S corporation and which is subject to taxation under  
12 Section 40-18-174, or Section 40-18-175, shall receive a  
13 credit against the corporate income tax levied by Section  
14 40-18-31 or by Section 40-18-174 or Section 40-18-175, that  
15 otherwise would be owed to the state in any year by the  
16 investing company with respect to the income generated by or  
17 arising out of the qualifying project.

18 (3) The shareholders of an investing company which  
19 is an Alabama S corporation as defined in Section 40-18-160,  
20 and whose taxable income is subject to determination under  
21 Section 40-18-161, each shall receive a credit against the  
22 individual income tax levied by Section 40-18-5 that otherwise  
23 would be owed to the state in any year by each shareholder of  
24 the investing company with respect to income of the investing  
25 company generated by or arising out of the qualifying project.

1           (4) The partners, members, or owners of an investing  
2 company, the income of which is subject to taxation under  
3 Section 40-18-24, each shall receive a credit against the  
4 corporate income tax levied by Section 40-18-31, or against  
5 the individual income tax levied by Section 40-18-5, whichever  
6 is applicable to each such partner, member, or owner that  
7 otherwise would be owed to the state in any year by each  
8 partner, member, or owner of the investing company with  
9 respect to income of the investing company generated by or  
10 arising out of the qualifying project.

11           (5) An investing company which is a trust or estate  
12 having income subject to taxation under Section 40-18-25(c)  
13 shall receive a credit against the income tax levied by  
14 Section 40-18-5 that otherwise would be owed to the state in  
15 any year by the investing company on the income generated by  
16 or arising out of the qualifying project.

17           (6) The beneficiaries of an investing company which  
18 is a trust or estate the income of which is subject to  
19 taxation under Section 40-18-25(d) each shall receive a credit  
20 against the corporate income tax levied by Section 40-18-31,  
21 or against the individual income tax levied by Section  
22 40-18-5, whichever is applicable to each such beneficiary,  
23 that otherwise would be owed to the state in any year by each  
24 beneficiary of the investing company with respect to income of

1 the investing company generated by or arising out of the  
2 qualifying project.

3 (7) A shareholder, partner, member, owner, or  
4 beneficiary which is eligible to receive a credit under  
5 subdivision (3), (4), or (6) of this subsection and which is  
6 an Alabama S corporation, or which has income which is subject  
7 to taxation under Section 40-18-24 or Section 40-18-25(d),  
8 solely for purposes of the application of this subsection,  
9 shall be treated as though the shareholder, partner, member,  
10 owner, or beneficiary were also an investing company.

11 (8)a. An investing company which is a financial  
12 institution as defined in Section 40-16-1 shall receive a  
13 credit against the financial institution excise tax levied by  
14 Section 40-16-4 that otherwise would be owed to the state in  
15 any year by the investing company with respect to the income  
16 generated by or arising out of the qualifying project which is  
17 a data processing center, is a headquarters facility, or is  
18 described in the 2007 North American Industry Classification  
19 System National Industry 561422 (other than establishments  
20 that originate telephone calls). To receive the capital credit  
21 authorized by this paragraph (8)a., Section 40-18-193 shall be  
22 complied with. Further, the financial institution must be the  
23 investing company or it must own, directly or indirectly, at  
24 least 50 percent of the investing company. If the financial  
25 institution is a shareholder, partner, member, owner, or

1 beneficiary of an investing company which is not itself  
2 subject to taxation, the financial institution shall be  
3 entitled to a capital credit corresponding to its relative  
4 ownership interest in the investing company, subject to the 50  
5 percent ownership requirement of the immediately preceding  
6 sentence.

7 b. In making the report required by Section  
8 40-16-6(d), a financial institution receiving the capital  
9 credit authorized in paragraph (8)a. shall not take into  
10 account the qualifying project.

11 (9) The capital credit allowed under this subsection  
12 for any tax year of an investing company shall not exceed the  
13 aggregate amount which otherwise would be due from the  
14 investing company, its shareholders, partners, members,  
15 owners, or beneficiaries to the state in tax with respect to  
16 the income of the investing company generated by or arising  
17 out of the qualifying project, determined after the  
18 application of all other deductions, losses, or credits  
19 permitted under Titles 40 and 41, for the taxable year, and  
20 determined by applying the maximum rate applicable to  
21 individuals under Section 40-18-5, or the rate applicable to  
22 corporations under Section 40-18-31, or the rate applicable to  
23 financial institutions under Section 40-16-4, as the case may  
24 be. Notwithstanding the foregoing, the capital credit allowed  
25 under this subsection shall not exceed 60 percent of the

1 aggregate amount which would otherwise be due from the  
2 investing company, in the case of a qualifying project for the  
3 production of electricity from coal gasification or  
4 liquefaction or advanced fossil-based generation, as such  
5 terms are defined in Section 40-18-1, or hydropower  
6 production, or 80 percent of the aggregate amount which would  
7 otherwise be due, in the case of a qualifying project  
8 described in Section 40-18-190(a)(13)e which produces  
9 electricity from any other type of alternative energy  
10 resource.

11 (10) a. In Except as provided in subsection b.  
12 below, in no event may any amount described in this subsection  
13 be carried forward or back by any investing company,  
14 shareholders, partners, members, owners, or beneficiaries with  
15 respect to a prior or subsequent year.

16 b. If the qualifying project has capital costs of at  
17 least one hundred million dollars and provides not less than  
18 one hundred jobs for new employees, the capital credit may be  
19 carried forward for a maximum of four (4) taxable years,  
20 depending on the amount of capital costs. Amounts described in  
21 this subsection may only be carried forward by any investing  
22 company, shareholders, partners, members, owners, or  
23 beneficiaries as follows:

1           (1) If the capital costs are at least four hundred  
2 million dollars, the capital credit may be carried forward for  
3 a maximum of four (4) taxable years.

4           (2) If the capital costs are at least three hundred  
5 million dollars but less than four hundred million dollars,  
6 the capital credit may be carried forward for a maximum of  
7 three (3) taxable years.

8           (3) If the capital costs are at least two hundred  
9 million dollars but less than three hundred million dollars,  
10 the capital credit may be carried forward for a maximum of two  
11 (2) taxable years.

12           (4) If the capital costs are at least one hundred  
13 million dollars but less than two hundred million dollars, the  
14 capital credit may be carried forward for a maximum of one (1)  
15 taxable year.

16           (5) If the capital costs are less than one hundred  
17 million dollars, the capital credit may not be carried  
18 forward.

19           c. Any provisions of the law to the contrary  
20 notwithstanding any entity described in subsection b. may  
21 delay the initial utilization of the capital credit for up to  
22 three years after the qualifying project is placed in service,  
23 after which time the twenty year period for the credit shall  
24 begin.



1           (11) Any shareholder, partner, member, owner, or  
2 beneficiary of an investing company may elect annually to use  
3 his or her allowable portion of the tax credit created by this  
4 article as a nonrefundable estimated tax payment against his  
5 or her individual income tax liability. If a taxpayer makes an  
6 annual election to use the aforementioned credit as a  
7 nonrefundable estimated payment, the taxpayer shall compute  
8 the amount of the credit as though it were a credit, subject  
9 to all the requirements and limitations provided by law for  
10 the credit, but shall use the amount computed as a  
11 nonrefundable estimated payment and shall not use the same  
12 amount as a credit. In no event shall this provision be  
13 construed to allow the credit or nonrefundable estimated tax  
14 payment to expand the 20-year limitation of the credit or  
15 estimated tax payment. In no event shall a credit used as  
16 nonrefundable estimated payment exceed the amount that would  
17 be available if the credit were not used as a nonrefundable  
18 estimate payment.

19           (c) The amendments made to this section by Act  
20 2008-275 shall be effective for tax years and periods  
21 beginning after December 31, 2011.

22           Section 2. ~~This act shall become effective for all~~  
23 ~~qualifying projects placed in service after December 31, 2011,~~  
24 ~~following its passage and approval by the Governor, or its~~  
25 ~~otherwise becoming law. This act shall become effective for~~

1 all qualifying projects for which a project agreement has been  
2 entered into prior to December 31, 2011, but which have not  
3 been placed in service as of December 31, 2011, and for all  
4 qualifying projects for which a project agreement is entered  
5 into on or after December 31, 2011, following its passage and  
6 approval by the Governor, or its otherwise becoming law.

