

1 HB144
2 138199-2
3 By Representative Roberts
4 RFD: Economic Development and Tourism
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ENROLLED, An Act,

To amend Sections 40-9B-3 and 40-18-190, Code of Alabama 1975; to expand existing tax incentives to investments by companies primarily engaged in the coal mining industry.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-9B-3 and 40-18-190, Code of Alabama 1975, are amended to read as follows:

"§40-9B-3.

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

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

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

"(3) CONSTRUCTION RELATED TRANSACTION TAXES. The transaction taxes imposed by Chapter 23 of this title, or payments required to be made in lieu thereof, on tangible personal property and taxable services incorporated into an

1 industrial development property, the cost of which may be
2 added to capital account with respect to the property,
3 determined without regard to any rule which permits
4 expenditures properly chargeable to capital account to be
5 treated as current expenses.

6 "(4) DATA PROCESSING CENTER. An establishment at
7 which not less than 50 new jobs are located, and which is
8 engaged in the provision of complete processing and
9 specialized reports from data, the provision of automated data
10 processing and data entry services, the provision of an
11 infrastructure for hosting or data processing services, the
12 provision of specialized hosting activities, the provision of
13 application service provisioning, the provision of general
14 time-share mainframe facilities, or some combination of the
15 foregoing, without regard to whether any other activities are
16 conducted at the establishment.

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

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

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

9 "(8) INDUCEMENT. Refers to an agreement, or an
 10 "inducement agreement," entered into between a private user
 11 and a public authority or county or municipal government
 12 and/or a resolution or other official action, an "inducement
 13 resolution," "inducement letter," or "official action" adopted
 14 by a public authority or county or municipal government, in
 15 each case expressing, among other things, the present intent
 16 of such public authority or county or municipal government to
 17 issue bonds in connection with the private use property
 18 therein described.

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

22 "(10) INDUSTRIAL OR RESEARCH ENTERPRISE.

23 "a. Any trade or business described in the 2007
 24 North American Industry Classification System, promulgated by
 25 the Executive Office of the President of the United States,

1 Office of Management and Budget, Sectors 31 (other than
2 National Industry 311811), 32, and 33; Subsectors 423, 424,
3 511, and 927; Industry Groups 2121, 5417, 5415, and 5182
4 (without regard to the premise that data processing and
5 related services be performed in conjunction with a
6 third-party); Industries 11331 and 48691; and National
7 Industries 115111, 517110, 541380, and 561422 (other than
8 establishments that originate telephone calls) and includes
9 such trades and businesses as may be hereafter reclassified in
10 any subsequent publication of the North American Industry
11 Classification System or other industry classification system
12 developed in conjunction with the United States Department of
13 Commerce, or any process or treatment facility which recycles,
14 reclaims, or converts any materials, which include solids,
15 liquids, or gases, to a reusable product.

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

1 premises are used as part of the operations of the Alabama
2 State Port Authority.

3 "c. "Industrial or research enterprise" includes the
4 above-described trades and business and any others as may
5 hereafter be reclassified in any subsequent publication of the
6 NAICS or similar industry classification system developed in
7 conjunction with the United States Department of Commerce or
8 Office of Management and Budget.

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

16 "e. "Industrial or research enterprise" also
17 includes any plant, property, or facility that meets both of
18 the following:

19 "1. It produces electricity from:

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

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

1 "2. All or a portion of the plant, property, or
2 facility is owned by one or more of the following: A utility
3 described in Section 37-4-1(7)a., an entity organized under
4 the provisions of Chapter 6 of Title 37, or an authority both
5 organized and existing pursuant to the provisions of Chapter
6 50A of Title 11 and subject to the payments required to be
7 made in lieu of ad valorem, sales, use, license, and severance
8 taxes imposed by Section 11-50A-7, or an entity in which one
9 or more of the foregoing owns an interest.

10 "f. "Industrial or research enterprise" also
11 includes any headquarters facility.

12 "g. "Industrial or research enterprise" also
13 includes any data processing center.

14 "h. "Industrial or research enterprise" also
15 includes any research and development facility.

16 "i. "Industrial or research enterprise" also
17 includes any renewable energy facility.

18 "(11) MAJOR ADDITION. Any addition to an existing
19 industrial development property that equals the lesser of: 30
20 percent of the original cost of the industrial development
21 property or two million dollars (\$2,000,000). For purposes of
22 this subsection, the original cost of existing industrial
23 development property shall be the amount of industrial
24 development property with respect to which an abatement was
25 granted under this chapter when the property was constructed,

1 or if the existing industrial development property was
2 constructed before January 1, 1993, the maximum amount that
3 would have been allowed if the provisions of this chapter had
4 applied at the time it was constructed. Only property that
5 constitutes industrial development property shall be taken
6 into account in making the determination in the previous
7 sentence. Major addition shall include any addition costing at
8 least two million dollars (\$2,000,000) which constitutes an
9 industrial or research enterprise, regardless of whether added
10 to an existing industrial development property.

11 "(12) MAXIMUM EXEMPTION PERIOD. Except as provided
12 in Section 40-9B-11, a period equal to the shorter of:

13 "a. Ten years from and after: 1. The date of initial
14 issuance by a county, city, or public authority of bonds to
15 finance any costs of a private use property, or 2. If no such
16 bonds are ever issued, the later of: (i) The date on which
17 title to the property was acquired by or vested in the county,
18 city, or public authority, or (ii) The date on which the
19 property is or becomes owned, for federal income tax purposes,
20 by a private user; or

21 "b. The weighted average economic life of the assets
22 comprising such property, determined consistently with the
23 provisions of 26 U.S.C. § 147(b) and measured from the date
24 such property is placed in service.

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

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

9 "(15) PERSON. Includes any individual, partnership,
10 trust, estate, or corporation.

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

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

22 "(18) PRIVATE USE PROPERTY. Any real and/or personal
23 property which is or will be treated as owned by a private
24 user for federal income tax purposes even though title may be
25 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).

1 "(22) RESEARCH AND DEVELOPMENT FACILITY. An
2 establishment engaged in conducting original investigations
3 undertaken on a systematic basis to gain new knowledge or
4 applying research findings or other scientific knowledge to
5 create new or significantly improved products or processes, or
6 both.

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

1 number of new employees to be employed at the industrial or
 2 research enterprise described in paragraph e. of subdivision
 3 (10) of this subsection; and any other information required by
 4 the Department of Revenue.

5 "(b) The abatements of ad valorem taxes, and
 6 payments in lieu thereof, allowed by amendments to this
 7 section by Act 2008-275 shall become effective for projects
 8 for which statements of intent are filed after December 31,
 9 2011. No ad valorem taxes, or payments in lieu thereof, shall
 10 be abated for periods prior to January 1, 2012. The other
 11 abatements allowed by amendments made to this section by Act
 12 2008-275 shall become effective after December 31, 2011.

13 "§40-18-190.

14 "(a) The following terms shall have the following
 15 meanings, respectively, when used in this article unless the
 16 context clearly requires otherwise:

17 "(1) BASE WAGE REQUIREMENT.

18 "a. For qualifying projects in which an investing
 19 company files a written statement of intent (Form INT) with
 20 the department on or before May 21, 2009, "base wage
 21 requirement" means either an average hourly wage of not less
 22 than eight dollars (\$8) per hour or an average total
 23 compensation of not less than ten dollars (\$10) per hour,
 24 including benefits.

1 "b. For qualifying projects that are not located in
2 a favored geographic area and for which an investing company
3 files a written statement of intent (Form INT) with the
4 department after May 21, 2009, "base wage requirement" means
5 an average hourly wage, inclusive of all employees in Alabama,
6 of not less than the lesser of fifteen dollars (\$15) per hour
7 (indexed annually in accordance with the manner provided in
8 Section 25-5-68) or the average hourly wage of the county
9 where the qualifying project is located (as reported annually
10 by the Department of Industrial Relations), both excluding
11 benefits.

12 "c. For qualifying projects that are located in a
13 favored geographic area and for which an investing company
14 files a written statement of intent (Form INT) with the
15 department after May 21, 2009, "base wage requirement" means
16 an average hourly wage, inclusive of all employees in Alabama,
17 of not less than the lesser of twelve dollars (\$12) per hour
18 (indexed annually in accordance with the manner provided in
19 Section 25-5-68) or the average hourly wage of the county
20 where the qualifying project is located (as reported annually
21 by the Department of Industrial Relations), both excluding
22 benefits.

23 "d. Notwithstanding the foregoing, wages of direct
24 processors of agriculture food products shall be subject to
25 the local labor market. In the event that reliable local labor

1 market statistics are not available, the department shall, by
 2 regulation or ruling, establish a source of wage information
 3 that best represents the average hourly wage rate in Alabama
 4 for direct processors of agriculture food products.

5 "(2) CAPITAL COSTS. All costs and expenses incurred
 6 by one or more investing companies in connection with the
 7 acquisition, construction, installation and equipping of a
 8 qualifying project during the period commencing with the date
 9 on which such acquisition, construction, installation and
 10 equipping commences and ending on the date on which the
 11 qualifying project is placed in service, including, without
 12 limitation all of the following:

13 "a. The costs of acquiring, constructing,
 14 installing, equipping, and financing a qualifying project,
 15 including all obligations incurred for labor and to
 16 contractors, subcontractors, builders, and materialmen.

17 "b. The costs of acquiring land or rights in land
 18 and any cost incidental thereto, including recording fees.

19 "c. The costs of contract bonds and of insurance of
 20 all kinds that may be required or necessary during the
 21 acquisition, construction, or installation of a qualifying
 22 project.

23 "d. The costs of architectural and engineering
 24 services, including test borings, surveys, estimates, plans
 25 and specifications, preliminary investigations, environmental

1 mitigation and supervision of construction, as well as for the
2 performance of all the duties required by or consequent upon
3 the acquisition, construction, and installation of a
4 qualifying project.

5 "e. The costs associated with installation of
6 fixtures and equipment; surveys, including archaeological and
7 environmental surveys; site tests and inspections; subsurface
8 site work; excavation; removal of structures, roadways,
9 cemeteries, and other surface obstructions; filling, grading,
10 paving and provisions for drainage, storm water retention,
11 installation of utilities, including water, sewer, sewage
12 treatment, gas, electricity, communications, and similar
13 facilities; off-site construction of utility extensions to the
14 boundaries of the property.

15 "f. All other costs of a nature comparable to those
16 described, including, without limitation, all project costs
17 which are required to be capitalized for federal income tax
18 purposes pursuant to 26 U.S.C. § 263A.

19 "g. Costs otherwise defined as capital costs that
20 are incurred by the investing company where the investing
21 company is the lessee under a lease that: (1) has a term of
22 not less than five years, and (2) is characterized as a
23 capital lease for federal income tax purposes; provided, that
24 if the project is a headquarters facility, the lease may be
25 characterized as an operating lease for federal income tax

1 purposes in which event capital costs shall include the net
2 present value of the payments made by the investing company
3 under the lease computed using the applicable federal rate for
4 the month in which the qualifying project is placed in service
5 and for the term most closely approximating the term of the
6 lease. Capital costs shall not include property owned or
7 leased by the investing company or a related party before the
8 commencement of the acquisition, construction, installation or
9 equipping of the qualifying project unless such property was
10 physically located outside the state for a period of at least
11 one year prior to the date on which the qualifying project was
12 placed in service.

13 "h. Costs either paid or incurred by (i) a public
14 industrial development board or authority, city, or county, or
15 other public corporation or political subdivision (a "public
16 entity") for the benefit of a qualifying project where such
17 costs are treated as costs paid by an investing company with
18 respect to the qualifying project for federal income tax
19 purposes (such costs shall not include amounts contributed by
20 a public entity to a qualifying project as a capital
21 contribution or gift except to the extent that an investing
22 company has cost basis in the contribution or gift for federal
23 income tax purposes); or (ii) a related party to an investing
24 company to the extent such costs are included in or taken into
25 account in determining the investing company's federal income

1 tax basis in the qualifying project, whether or not incurred
 2 by an investing company.

3 "(3) CAPITAL CREDIT. An annual amount equal to up to
 4 five percent of the capital costs of the qualifying project,
 5 such amount to be credited or allowed in accordance with
 6 Section 40-18-194 and Section 40-18-195 hereof and other
 7 provisions of law, against the state income tax or financial
 8 institution excise tax, as provided in Section 40-18-194,
 9 liability generated by or arising out of the qualifying
 10 project in each of the 20 years commencing with the year
 11 during which the qualifying project is placed in service and
 12 continuing for 19 consecutive years thereafter.

13 "(4) DATA PROCESSING CENTER. An establishment
 14 engaged in the provision of complete processing and
 15 specialized reports from data, the provision of automated data
 16 processing and data entry services, the provision of an
 17 infrastructure for hosting or data processing services, the
 18 provision of specialized hosting activities, the provision of
 19 application service provisioning, the provision of general
 20 time-share mainframe facilities, or some combination of the
 21 foregoing, without regard to whether any other activities are
 22 conducted at the establishment.

23 "(5) DEPARTMENT. The Alabama Department of Revenue.

24 "(6) FAVORED GEOGRAPHIC AREA. Either of the
 25 following:

1 "a. Any area designated or created as an enterprise
2 zone by law or that is governed by the Alabama Enterprise Zone
3 Act.

4 "b. 1. Any Alabama county which is considered to be
5 less developed. A county is considered to be less developed if
6 it has been found to be less developed by the Alabama
7 Department of Industrial Relations using the most current data
8 available from the United States Departments of Labor or
9 Commerce, the United States Bureau of the Census, or any other
10 federal or state agency, and which finding shall be made
11 immediately upon passage of Act 2001-965 and not later than
12 January 1 of each year thereafter.

13 2. A county shall be found to be less developed if
14 it is ranked as the forty-fifth through sixty-seventh county,
15 inclusive, using the following factors:

16 "(i) Percent change in population over the most
17 recent five-year period.

18 "(ii) Personal per capita income in the last
19 calendar year for which data are available.

20 "(iii) The average percent employed over the last 12
21 months for which data are available.

22 "3. The factors used in ranking counties will be
23 weighted in the following manner:

24 "(i) Percent change in population (25 percent).

25 "(ii) Personal per capita income (25 percent).

1 "(iii) Average percent employed (50 percent).

2 "(7) HEADQUARTERS FACILITIES.

3 "a. For qualifying projects in which an investing
4 company files a written statement of intent (Form INT) with
5 the department on or before May 21, 2009, "headquarters
6 facilities" means a facility which will serve as the national,
7 regional or state headquarters for an investing company that
8 conducts significant business operations outside the state and
9 will serve as the principal office of the principal operating
10 officer of the qualifying project. For purposes of this
11 Article 7, the term "principal operating officer" is defined
12 as the person with chief responsibility for the daily business
13 operations of the qualifying project.

14 "b. For qualifying projects in which an investing
15 company files a written statement of intent (Form INT) with
16 the department after May 21, 2009, "headquarters facilities"
17 means any trade or business described in the 2007 North
18 American Industry Classification System, promulgated by the
19 Executive Office of the President of the United States, Office
20 of Management and Budget, National Industry 551114.

21 "(8) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.

22 Any trade or business described in the 2007 North American
23 Industry Classification System, promulgated by the Executive
24 Office of the President of the United States, Office of
25 Management and Budget, Sectors 31 (other than National

1 Industry 311811), 32, and 33; Subsectors 423, 424, 511, and
2 927; Industry Groups 2121, 5417, 5415, and 5182 (without
3 regard to the premise that data processing and related
4 services be performed in conjunction with a third-party);
5 Industries 11331 and 48691; and National Industries 115111,
6 517110, 541380, and 561422 (other than establishments that
7 originate telephone calls) and includes such trades and
8 businesses as may be hereafter reclassified in any subsequent
9 publication of the North American Industry Classification
10 System or other industry classification system developed in
11 conjunction with the United States Department of Commerce, or
12 any process or treatment facility which recycles, reclaims, or
13 converts materials, which include solids, liquids, or gases,
14 to a reusable product.

15 "(9) INVESTING COMPANY. Any corporation,
16 partnership, limited liability company, proprietorship, trust
17 or other business entity, regardless of form, making a
18 qualified investment.

19 "(10) NEW EMPLOYEES. Those persons who have not been
20 previously employed at the site on which the qualifying
21 project is or will be located or by an investing company or
22 companies in the state; will be employed full-time at the
23 qualifying project; and will be subject to the personal income
24 tax imposed by Section 40-18-2, upon commencement of
25 employment at the qualifying project.

1 "(11) PROJECT. Any land, building or other
2 improvement, and all real and personal properties deemed
3 necessary or useful in connection therewith, whether or not
4 previously in existence, located or to be located in the
5 state.

6 "(12) QUALIFYING INVESTMENT. The undertaking by one
7 or more investing companies of a qualifying project.

8 "(13) QUALIFYING PROJECT. A project to be sponsored
9 or undertaken by one or more investing companies meeting any
10 one of the following requirements:

11 "a. A project the capital costs of which are not
12 less than two million dollars (\$2,000,000), and at which the
13 predominant trade or business activity conducted will
14 constitute industrial, warehousing, or research activity.

15 "b. A small business addition the capital costs of
16 which are not less than one million dollars (\$1,000,000), and
17 at which the predominant trade or business activity conducted
18 will constitute industrial, warehousing, or research activity.

19 "c. A headquarters facility the capital costs of
20 which are not less than two million dollars (\$2,000,000) at
21 which the predominant trade or business activity conducted
22 will not be the production of electricity.

23 "d. A project located in a favored geographic area
24 the capital costs of which are not less than five hundred
25 thousand dollars (\$500,000), and at which the predominant

1 trade or business activity conducted will constitute
2 industrial, warehousing, or research activity.

3 "e. A project owned by a utility described in
4 Section 37-4-1(7)a., or owned by an investing company which is
5 itself owned by a utility, the capital costs of which are not
6 less than the following:

7 "1. One hundred million dollars (\$100,000,000), if
8 the predominant trade or business activity conducted will be
9 the production of electricity from alternative energy
10 resources.

11 "2. Five million dollars (\$5,000,000), if the
12 predominant trade or business activity conducted will be the
13 production of electricity from hydropower production.

14 "f. A data processing center the capital costs of
15 which are not less than the following:

16 "1. Two million dollars (\$2,000,000), if the data
17 processing center is not located in a favored geographic area.

18 "2. Five hundred thousand dollars (\$500,000), if the
19 data processing center is located in a favored geographic
20 area.

21 "g. A research and development facility the capital
22 costs of which are not less than the following:

23 "1. Two million dollars (\$2,000,000), if the
24 research and development facility is not located in a favored
25 geographic area.

1 "2. Five hundred thousand dollars (\$500,000), if the
2 research and development facility is located in a favored
3 geographic area.

4 "h. A renewable energy facility the capital costs of
5 which are not less than the following:

6 "1. Two million dollars (\$2,000,000), if the
7 renewable energy facility is not located in a favored
8 geographic area.

9 "2. Five hundred thousand dollars (\$500,000), if the
10 renewable energy facility is located in a favored geographic
11 area.

12 "(14) RELATED PARTY. A person or entity that bears a
13 relationship to an investing company described in Section
14 267(b), (c), or (e) of the Internal Revenue Code of 1986, as
15 amended.

16 "(15) 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).

1 "(16) RESEARCH AND DEVELOPMENT FACILITY. An
2 establishment engaged in conducting original investigations
3 undertaken on a systematic basis to gain new knowledge or
4 applying research findings or other scientific knowledge to
5 create new or significantly improved products or processes, or
6 both.

7 "(17) SMALL BUSINESS ADDITION. Any land, building or
8 other improvement, and all real and personal properties deemed
9 necessary or useful in connection therewith, whether or not
10 previously in existence, to be used as a part of any existing
11 facility of a business located in the state that, prior to the
12 date on which the addition is placed in service, had 100 or
13 fewer full-time employees.

14 "(18) TAX YEAR. The applicable taxable year as the
15 term is defined in Section 40-18-1(36).

16 "(19) 1993 ACT. Act No. 93-851, H. 27 and Act No.
17 93-852, H. 83 adopted at the 1993 First Special Session of the
18 Legislature of Alabama, as amended by Act No. 94-370, S. 559
19 adopted at the 1994 Regular Session of the Legislature of
20 Alabama.

21 "(b) The amendments made to this section by Act
22 2008-275 shall be effective for tax years and periods
23 beginning after December 31, 2011."

24 Section 2. (a) Notwithstanding any other provision
25 of law to the contrary, including Sections 40-18-190(a) and

1 40-18-195, the capital credit authorized pursuant to this act
 2 for any trade or business described in the 2007 North American
 3 Industry Classification System Industry Group 2121 shall be
 4 modified as follows:

5 (1) Capital costs shall not include the amounts
 6 specified in Section 40-18-190(a) (2)b. and d.

7 (2) The capital credit shall be an annual amount
 8 equal to up to 5 percent of 100 percent of the capital costs,
 9 as modified by subdivision (1) of this Section, of the
 10 qualifying project.

11 (3) The capital credit shall be reduced or
 12 eliminated with respect to a qualifying project at the time
 13 the sum of all capital credits applied against the state
 14 income tax liability of the investing company, or its
 15 shareholders, partners, members, owners, or beneficiaries,
 16 equals 50 percent of the capital costs, as modified by
 17 subdivision (1) of this Section, of the qualifying project. It
 18 is the intent of the Legislature that the capital credits
 19 authorized pursuant to this act shall be credited or allowed
 20 against the state income tax liability of the investing
 21 company in each of the 20 years commencing with the year
 22 during which the qualifying project is placed in service and
 23 continuing for 19 consecutive years thereafter, provided that
 24 the aggregate amount of capital credits shall not exceed 50

1 percent of the capital costs, as modified by subdivision (1)
2 of this Section, of the qualifying project.

3 (b) Notwithstanding any other provision of law to
4 the contrary, including Section 40-9B-4, abatements of state
5 taxes authorized by this act for any trade or business
6 described in the 2007 North American Industry Classification
7 System Industry Group 2121 shall be limited to fifty percent
8 (50%) of the state levied non-educational ad valorem taxes,
9 construction related transaction taxes, and mortgage and
10 recording taxes related to the private use industrial
11 property.

12 Section 3. The capital credits and abatements
13 authorized by this act for any trade or business described in
14 the 2007 North American Industry Classification System
15 Industry Group 2121 shall not be available to qualifying
16 projects or private use industrial property two years
17 following the effective date of this act, unless the
18 Legislature, by joint resolution, votes to continue or
19 reinstate the capital credit and abatements for such projects
20 after that date. No action or inaction on the part of the
21 Legislature shall reduce or suspend the capital credits or
22 abatements described in the immediately preceding sentence in
23 any past or future calendar year with respect to any investing
24 company that files a statement of intent pursuant to Section
25 40-18-191 or any governing body of a municipality, county, or

1 public industrial authority that grants an abatement for
2 periods on or prior to two years following the effective date
3 of this act, it being the sole intention of this section that
4 failure of the Legislature to adopt a joint resolution
5 continuing the capital credits or abatements for periods after
6 two years following the effective date of this act, shall
7 affect only the availability of the capital credits or
8 abatements to new qualifying projects or new private use
9 industrial property for periods after two years following the
10 effective date of this act, and shall not affect qualifying
11 projects that have established their eligibility to receive
12 capital credits under Section 40-18-191 or private use
13 industrial property that is granted an abatement by the
14 governing body of a municipality, county, or public industrial
15 authority for periods on or prior to two years following the
16 effective date of this act.

17 Section 4. The Department of Revenue shall report
18 annually to the Legislature and to the public as to qualifying
19 projects which claim capital credits and abatements as a
20 result of the amendments provided in this act. The report
21 shall be due on the fifth legislative day of each regular
22 session and shall state the number of qualifying projects, the
23 capital costs of the qualifying projects, the total amount of
24 capital credits claimed during the year, and the total amount
25 of taxes abated during the year. This report shall be separate

1 from and supplemental to the report required by Section
2 40-18-196.

3 Section 5. The provisions of this act are severable.
4 If any part of this act is declared invalid or
5 unconstitutional, the declaration shall not affect the part
6 which remains.

7 Section 6. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 09-FEB-12.

Greg Pappas
Clerk

Senate	23-FEB-12	Amended and Passed
House	01-MAR-12	Passed, as amended by Conference Com- mittee Report
Senate	01-MAR-12	Passed, as amended by Conference Com- mittee Report