

1 HB599
2 139121-7
3 By Representatives Scott, Mask and Collins
4 RFD: Ways and Means Education
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ENROLLED, An Act,

To amend Sections 40-9B-3, 40-18-190, and 40-18-193, Code of Alabama 1975, to allow the governing body of a municipality, county, or a public industrial authority to grant abatements of certain ad valorem taxes and construction related transaction taxes to private users of tourism destination attractions for a period of up to 10 years and to enable tourism destination attractions to qualify for capital credits.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Alabama Tourism Destination Attraction Incentive Act.

Section 2. Sections 40-9B-3, 40-18-190, and 40-18-193, 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

1 the sale were to a person exempt, to the extent of the
2 abatement, from the transaction tax.

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

5 "(3) CONSTRUCTION RELATED TRANSACTION TAXES. The
6 transaction taxes imposed by Chapter 23 of this title, or
7 payments required to be made in lieu thereof, on tangible
8 personal property and taxable services incorporated into an
9 industrial development property, the cost of which may be
10 added to capital account with respect to the property,
11 determined without regard to any rule which permits
12 expenditures properly chargeable to capital account to be
13 treated as current expenses.

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

1 "(5) EDUCATION TAXES. Ad valorem taxes, or payments
2 required to be made in lieu thereof, that must, pursuant to
3 the Constitution of Alabama of 1901, as amended, legislative
4 act, or the resolution or other action of the governing board
5 authorizing the tax, be used for educational purposes or for
6 capital improvements for education and local construction
7 related transaction taxes levied for educational purposes or
8 for capital improvements for education.

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

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

17 "(8) INDUCEMENT. Refers to an agreement, or an
18 "inducement agreement," entered into between a private user
19 and a public authority or county or municipal government
20 and/or a resolution or other official action, an "inducement
21 resolution," "inducement letter," or "official action" adopted
22 by a public authority or county or municipal government, in
23 each case expressing, among other things, the present intent
24 of such public authority or county or municipal government to

1 issue bonds in connection with the private use property
2 therein described.

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

6 "(10) INDUSTRIAL OR RESEARCH ENTERPRISE.

7 "a. Any trade or business described in the 2007
8 North American Industry Classification System, promulgated by
9 the Executive Office of the President of the United States,
10 Office of Management and Budget, Sectors 31 (other than
11 National Industry 311811), 32, and 33; Subsectors 423, 424,
12 511, and 927; Industry Groups 5417, 5415, and 5182 (without
13 regard to the premise that data processing and related
14 services be performed in conjunction with a third-party);
15 Industries 11331 and 48691; and National Industries 115111,
16 517110, 541380, and 561422 (other than establishments that
17 originate telephone calls) and includes such trades and
18 businesses as may be hereafter reclassified in any subsequent
19 publication of the North American Industry Classification
20 System or other industry classification system developed in
21 conjunction with the United States Department of Commerce, or
22 any process or treatment facility which recycles, reclaims, or
23 converts any materials, which include solids, liquids, or
24 gases, to a reusable product.

1 "b. With respect to abatements granted in accordance
2 with Section 40-9B-9, and only with respect to such
3 abatements, "industrial or research enterprise" means any
4 trade or business described in the 2007 North American
5 Industry Classification System within Subsector 493
6 (Warehousing and Storage), Industry Number 488310 (Port and
7 Harbor Operations), or Industry Number 488320 (Marine Cargo
8 Handling), when such trade or business is conducted on
9 premises in which the Alabama State Port Authority has an
10 ownership, leasehold, or other possessory interest and such
11 premises are used as part of the operations of the Alabama
12 State Port Authority.

13 "c. "Industrial or research enterprise" includes the
14 above-described trades and business and any others as may
15 hereafter be reclassified in any subsequent publication of the
16 NAICS or similar industry classification system developed in
17 conjunction with the United States Department of Commerce or
18 Office of Management and Budget.

19 "d. "Industrial or research enterprise" also
20 includes any underground natural gas storage facility which is
21 located in the Gulf Opportunity Zone, as that phrase is
22 defined in the Gulf Opportunity Zone Act of 2005, developed
23 from existing geologic reservoirs, including, without
24 limitation, salt domes, and placed in service on or before
25 December 31, 2013.

1 "e. "Industrial or research enterprise" also
2 includes any plant, property, or facility that meets both of
3 the following:

4 "1. It produces electricity from:

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

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

10 "2. All or a portion of the plant, property, or
11 facility is owned by one or more of the following: A utility
12 described in Section 37-4-1(7)a., an entity organized under
13 the provisions of Chapter 6 of Title 37, or an authority both
14 organized and existing pursuant to the provisions of Chapter
15 50A of Title 11 and subject to the payments required to be
16 made in lieu of ad valorem, sales, use, license, and severance
17 taxes imposed by Section 11-50A-7, or an entity in which one
18 or more of the foregoing owns an interest.

19 "f. "Industrial or research enterprise" also
20 includes any headquarters facility.

21 "g. "Industrial or research enterprise" also
22 includes any data processing center.

23 "h. "Industrial or research enterprise" also
24 includes any research and development facility.

1 "i. "Industrial or research enterprise" also
 2 includes any renewable energy facility.

3 "j. "Industrial or research enterprise" also
 4 includes any tourism destination attraction.

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

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

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

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

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

15 "(14) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem
 16 taxes, or payments required to be made in lieu thereof,
 17 imposed by the state, counties, municipalities, and other
 18 taxing jurisdictions of Alabama that are not required to be
 19 used for educational purposes or for capital improvements for
 20 education.

21 "(15) PERSON. Includes any individual, partnership,
 22 trust, estate, or corporation.

23 "(16) PRIVATE USER. Any individual, partnership, or
 24 corporation organized for profit that is or will be treated as
 25 the owner of private use property for federal income tax

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

6 "(17) PRIVATE USE INDUSTRIAL PROPERTY. Private use
7 property that also constitutes industrial development
8 property.

9 "(18) PRIVATE USE PROPERTY. Any real and/or personal
10 property which is or will be treated as owned by a private
11 user for federal income tax purposes even though title may be
12 held by a public authority or municipal or county government;
13 any real and/or personal property which is owned by any entity
14 organized under Chapter 6 of Title 37; and any real and/or
15 personal property which is owned by any authority both
16 organized and existing pursuant to Chapter 50A of Title 11,
17 and subject to the payments required to be made in lieu of ad
18 valorem, sales, use, license, and severance taxes imposed by
19 Section 11-50A-7.

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

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

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

6 "a. Produces electricity or natural gas, in whole or
7 in part, from biofuels as such term is defined in Section
8 2-2-90(c) (2) or from renewable energy resources as such term
9 is defined in Section 40-18-1(30) with the exception that
10 hydropower production shall be excluded from such definition;
11 or

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

14 "(22) RESEARCH AND DEVELOPMENT FACILITY. An
15 establishment engaged in conducting original investigations
16 undertaken on a systematic basis to gain new knowledge or
17 applying research findings or other scientific knowledge to
18 create new or significantly improved products or processes, or
19 both.

20 "(23) STATEMENT OF INTENT. A written statement of
21 intent to claim an abatement provided in this chapter, or to
22 petition for local tax abatement, relating to an industrial or
23 research enterprise described in paragraph e. of subdivision
24 (10) of this subsection that is filed with the Department of
25 Revenue at any time prior to the date on which the industrial

1 or research enterprise described in paragraph e. of
2 subdivision (10) of this subsection is placed in service in
3 accordance with such procedures and on such form or forms as
4 may be prescribed by the Department of Revenue. Such statement
5 of intent shall contain a description of the industrial or
6 research enterprise described in paragraph e. of subdivision
7 (10) of this subsection; the date on which the acquisition,
8 construction, installation, or equipping of the industrial or
9 research enterprise described in paragraph e. of subdivision
10 (10) of this subsection was commenced or is expected to
11 commence; the actual or, if not known, the estimated capital
12 costs of the industrial or research enterprise described in
13 paragraph e. of subdivision (10) of this subsection; the
14 number of new employees to be employed at the industrial or
15 research enterprise described in paragraph e. of subdivision
16 (10) of this subsection; and any other information required by
17 the Department of Revenue.

18 "(24) TOURISM DESTINATION ATTRACTION. A commercial
19 enterprise which is open to the public not less than 120 days
20 during a calendar year and is designed to attract visitors
21 from inside or outside of the State of Alabama, typically for
22 its inherent cultural value, historical significance, natural
23 or man-made beauty, or entertainment or amusement
24 opportunities. The term shall include, but not be limited to,
25 a cultural or historical site; a botanical garden; a museum; a

1 wildlife park or aquarium open to the public that cares for
2 and displays a collection of animals or fish; an amusement
3 park; a convention hotel and conference center; a water park;
4 or a spectator venue or arena.

5 "A tourism destination attraction shall not include
6 a facility primarily devoted to the retail sale of goods; a
7 shopping center; a restaurant; a movie theater; a bowling
8 alley; a fitness center; a miniature golf course; or a
9 nightclub. Provided, however, that the capital costs of the
10 construction of a tourism destination attraction may include
11 the capital costs associated with the construction of any
12 retail establishment, restaurant or other portion of the
13 tourism destination attraction.; ~~or a recreational facility~~
14 ~~unless such facility is designed to attract visitors who would~~
15 ~~stay overnight in commercial lodging either at or near the~~
16 ~~facility while visiting the tourism destination attraction.~~
17 The term also does not include any gaming facility or
18 establishment that the Director of the Alabama Development
19 Office Secretary of the Department of Commerce deems to be
20 primarily serving the local community.

21 "(b) The abatements of ad valorem taxes, and
22 payments in lieu thereof, allowed by amendments to this
23 section by Act 2008-275 shall become effective for projects
24 for which statements of intent are filed after December 31,
25 2011. No ad valorem taxes, or payments in lieu thereof, shall

1 be abated for periods prior to January 1, 2012. The other
 2 abatements allowed by amendments made to this section by Act
 3 2008-275 shall become effective after December 31, 2011.

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

12 "§40-18-190.

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

16 "(1) BASE WAGE REQUIREMENT.

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

24 "b. For qualifying projects that are not located in
 25 a favored geographic area and for which an investing company

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

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

21 "d. Notwithstanding the foregoing, wages of direct
22 processors of agriculture food products shall be subject to
23 the local labor market. In the event that reliable local labor
24 market statistics are not available, the department shall, by
25 regulation or ruling, establish a source of wage information

1 that best represents the average hourly wage rate in Alabama
2 for direct processors of agriculture food products.

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

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

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

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

21 "d. The costs of architectural and engineering
22 services, including test borings, surveys, estimates, plans
23 and specifications, preliminary investigations, environmental
24 mitigation and supervision of construction, as well as for the
25 performance of all the duties required by or consequent upon

1 the acquisition, construction, and installation of a
2 qualifying project.

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

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

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

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

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

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

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

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

22 "(6) FAVORED GEOGRAPHIC AREA. Either of the
23 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 5417, 5415, and 5182 (without regard to
3 the premise that data processing and related services be
4 performed in conjunction with a third-party); Industries 11331
5 and 48691; and National Industries 115111, 517110, 541380, and
6 561422 (other than establishments that originate telephone
7 calls) and includes such trades and businesses as may be
8 hereafter reclassified in any subsequent publication of the
9 North American Industry Classification System or other
10 industry classification system developed in conjunction with
11 the United States Department of Commerce, or any process or
12 treatment facility which recycles, reclaims, or converts
13 materials, which include solids, liquids, or gases, to a
14 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 "i. A tourism destination attraction the capital
13 costs of which are not less than the following:

14 "1. ~~Ten million dollars (\$10,000,000)~~ Twenty million
15 (\$20,000,000) if the tourism destination attraction is not
16 located in a favored geographic area.

17 "2. ~~Three million dollars (\$3,000,000)~~ Five million
18 dollars (\$5,000,000) if the tourism destination attraction is
19 located in a favored geographic area.

20 "(14) RELATED PARTY. A person or entity that bears a
21 relationship to an investing company described in Section
22 267(b), (c), or (e) of the Internal Revenue Code of 1986, as
23 amended.

24 "(15) RENEWABLE ENERGY FACILITY. Any plant,
25 property, or facility that either:

1 "a. Produces electricity or natural gas, in whole or
2 in part, from biofuels as such term is defined in Section
3 2-2-90(c) (2) or from renewable energy resources as such term
4 is defined in Section 40-18-1(30) with the exception that
5 hydropower production shall be excluded from such definition;
6 or

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

9 "(16) RESEARCH AND DEVELOPMENT FACILITY. An
10 establishment engaged in conducting original investigations
11 undertaken on a systematic basis to gain new knowledge or
12 applying research findings or other scientific knowledge to
13 create new or significantly improved products or processes, or
14 both.

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

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

24 "(19) TOURISM DESTINATION ATTRACTION. A commercial
25 enterprise which is open to the public not less than 120 days

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

11 "A tourism destination attraction shall not include
12 a facility primarily devoted to the retail sale of goods; a
13 shopping center; a restaurant; a movie theater; a bowling
14 alley; a fitness center; a miniature golf course; or a
15 nightclub. Provided, however, that the capital costs of the
16 construction of a tourism destination attraction may include
17 the capital costs associated with the construction of any
18 retail establishment, restaurant or other portion of the
19 tourism destination attraction.; ~~or a recreational facility~~
20 ~~unless such facility is designed to attract visitors who would~~
21 ~~stay overnight in commercial lodging either at or near the~~
22 ~~facility while visiting the tourism destination attraction.~~
23 The term also does not include any gaming facility or
24 establishment that the Director of the Alabama Development

1 ~~Office~~ Secretary of the Department of Commerce deems to be
2 primarily serving the local community.

3 "~~(19)~~(20) 1993 ACT. Act No. 93-851, H. 27 and Act
4 No. 93-852, H. 83 adopted at the 1993 First Special Session of
5 the Legislature of Alabama, as amended by Act No. 94-370, S.
6 559 adopted at the 1994 Regular Session of the Legislature of
7 Alabama.

8 "(b) The amendments made to this section by Act
9 2008-275 shall be effective for tax years and periods
10 beginning after December 31, 2011.

11 "§40-18-193.

12 "(a) It shall be a condition to the receipt of a
13 capital credit that:

14 "(1) For a qualifying project described in Section
15 40-18-190(a)(13)c. or f., not less than 50 jobs for new
16 employees at the qualifying project be provided commencing
17 with the date which is not later than one year after the
18 qualifying project is placed in service and that the average
19 wages for all new employees at the qualifying project be not
20 less than the base wage requirement by the date which is not
21 later than one year after the qualifying project is placed in
22 service and during each year during which all or any part of
23 the capital credit is available with respect to the qualifying
24 project.

1 "(2) For any qualifying project described in Section
2 40-18-190(a)(13)i., either of the following occur:

3 "a. Not less than ~~25~~ 50 jobs for new employees at
4 the qualifying project except as otherwise provided in this
5 subdivision and commencing with the date which is not later
6 than one year after the qualifying project is placed in
7 service and that the average wages for all new employees at
8 the qualifying project be not less than the base wage
9 requirement by the date which is not later than one year after
10 the qualifying project is placed in service and during each
11 year during which all or any part of the capital credit is
12 available with respect to the qualifying project.

13 "b. Not less than ~~10~~ 20 jobs for new employees at
14 the qualifying project which is located in a favored
15 geographic area and commencing with the date which is not
16 later than one year after the qualifying project is placed in
17 service and that the average wages for all new employees at
18 the qualifying project be not less than the base wage, as
19 defined in Section 40-18-190(a)(1), requirement by the date
20 which is not later than one year after the qualifying project
21 is placed in service and during each year during which all or
22 part of the capital credit is available with respect to the
23 qualifying project.

1 "~~(2)~~ (3) For any qualifying project other than a
2 qualifying project described in Sections 40-18-190(a)(13)c.✓
3 f., or ~~f.~~ i., either of the following occur:

4 "a. Not less than 20 jobs for new employees at a
5 qualifying project except as otherwise provided in this
6 subdivision and commencing with the date which is not later
7 than one year after the qualifying project is placed in
8 service and that the average wages for all new employees at
9 the qualifying project be not less than the base wage
10 requirement by the date which is not later than one year after
11 the qualifying project is placed in service and during each
12 year during which all or any part of the capital credit is
13 available with respect to the qualifying project.

14 "b. Not less than 15 jobs for new employees at the
15 qualifying project which is a small business addition be
16 provided commencing with the date which is not later than one
17 year after the qualifying project is placed in service and
18 that the average wages for all new employees at the qualifying
19 project be not less than the base wage requirement by the date
20 which is not later than one year after the qualifying project
21 is placed in service and during each year during which all or
22 any part of the capital credit is available with respect to
23 the qualifying project.

24 "c. Not less than five jobs for new employees at the
25 qualifying project which is located in a favored geographic

1 area and commencing with the date which is not later than one
2 year after the qualifying project is placed in service and
3 that the average wages for all new employees at the qualifying
4 project be not less than the base wage, as defined in Section
5 40-18-190(a) (1), requirement by the date which is not later
6 than one year after the qualifying project is placed in
7 service and during each year during which all or part of the
8 capital credit is available with respect to the qualifying
9 project.

10 "If an investing company closes or reduces its level
11 of employment at an existing facility in this state and within
12 two years following the closing or reduction in its level of
13 employment places a qualifying project in service, only the
14 number of new employees in excess of the number of employees
15 who worked at the existing facility at the time of the closure
16 or prior to the reduction in employment shall be deemed to be
17 new employees for purposes of this section.

18 "(b) The Legislature recognizes that one or more
19 entities may enter into a joint venture in the form of a
20 limited liability company, partnership, or other form of
21 business entity in connection with a qualifying project. It is
22 the intent of this article that the requirements of this
23 article respecting minimum capital costs and employment be
24 applied to the qualifying project and that the capital credit
25 be available and granted to those entities liable for or

1 against which the state income tax is allocated or assessed
2 with respect to the income generated by or arising out of the
3 qualifying project. It shall not be a requirement of this
4 article that the entity employing any new employees be the
5 same entity entitled to receive the capital credit so long as
6 the requirements of capital costs and new employees are
7 implemented and maintained with respect to the qualifying
8 project.

9 "(c) A change of ownership or assignment of interest
10 in any qualifying project shall not qualify the qualifying
11 project or any taxpayer to receive any additional capital
12 credits, and the purchaser, assignee, or successor of the
13 qualifying project or interests therein shall be entitled to
14 the capital credit upon the same conditions and for the same
15 period as the investing company or companies originally
16 entitled to the capital credit.

17 "(d) The Legislature recognizes that while certain
18 periods specified in this article with respect to the capital
19 credit are measured by calendar years it will be necessary for
20 the capital credit to be applied with respect to the tax years
21 of the recipients of the capital credit. Accordingly, the
22 department is hereby authorized to adopt regulations to
23 provide that the capital credit may be allocated to the tax
24 years of the recipient of the capital credit, including the
25 method of determining the pro rata amount of capital credit,

1 if any, available where the tax year of the recipient of the
2 capital credit will end subsequent to the end of any calendar
3 year period specified in this article.

4 "(e) A company shall be considered to have met the
5 employment and wage requirements for the portion of the year
6 following the date upon which such requirements are first met
7 and for each full year thereafter (such portion of a year and
8 each full year thereafter during the 20 year credit period is
9 hereinafter referred to as a "compliance year") if the
10 employment requirement is satisfied for at least 11/12 of each
11 compliance year and the wage requirement is met based on an
12 average determined over each compliance year.

13 "(f) (1) Any investing company that meets the
14 employment and wage requirements of this section by a date
15 which is not later than one year after the date on which the
16 qualifying project is placed in service, but fails to meet
17 such requirements in any subsequent compliance year, may still
18 claim the capital credit for each compliance year in which
19 such investing company again meets the employment and wage
20 requirements of this section. In no event, however, shall an
21 investing company be able to claim a capital credit in a
22 compliance year beginning: (i) after the third compliance year
23 (whether or not consecutive) in which the investing company
24 fails to meet the employment and wage requirements of this

1 section; or (ii) more than nineteen (19) years after the year
2 in which the qualifying project is first placed in service.

3 "(2) Any investing company that files a written
4 statement of intent (Form INT) with the department after May
5 21, 2009 and that meets the employment and wage requirements
6 of this section by a date which is not later than one year
7 after the date on which the qualifying project is placed in
8 service, but fails to meet such requirements in any subsequent
9 compliance year, shall forfeit a percentage of the capital
10 credits claimed in the prior five years. The forfeiture shall
11 equal 100 percent of the capital credits claimed in the year
12 immediately preceding the year in which the investing company
13 fails to maintain the employment and wage requirements of this
14 section. The forfeiture percentage shall be reduced by 20
15 percent for each successive prior year in the five year
16 forfeiture period. The forfeiture of capital credits shall be
17 treated in the same manner as the imposition of the tax
18 imposed by this chapter and shall be payable by the investing
19 company on the fifteenth day of the third month following the
20 close of the year in which the investing company failed to
21 meet the employment and wage requirements of this section."

22 Section 3. This act shall not apply to any gaming
23 facility.

24 Section 4. The provisions of this act are severable.
25 If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

3 Section 5. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

