

1 HB588  
2 213168-3  
3 By Representative Garrett  
4 RFD: Ways and Means Education  
5 First Read: 01-APR-21

1  
2 ENROLLED, An Act,

3           Relating to income taxation; to provide a credit to  
4 an owner, member, partner, or shareholder of an electing  
5 pass-through entity in an amount equal to its pro rata or  
6 distributive share; relating to the Alabama Jobs Act and the  
7 Growing Alabama Act; to amend Section 40-18-376, Code of  
8 Alabama 1975, as amended by Act 2021-2 of the 2021 Regular  
9 Session; to amend Sections 3 and 6 of Act 2021-2 of the 2021  
10 Regular Session; to make non-substantive technical language  
11 changes; to clarify the effect of the tax credit on  
12 distributions; and to clarify the entities that are eligible  
13 to claim the Growing Alabama tax credit.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15           Section 1. (a) Notwithstanding any other provision  
16 of Chapters 16 and 18 of Title 40 to the contrary, for tax  
17 years beginning on or after January 1, 2021, any owner,  
18 member, partner, or shareholder of an electing pass-through  
19 entity shall report its pro rata or distributive share of the  
20 income of the entity in accordance with the provisions of  
21 Sections 40-16-4, 40-18-24, 40-18-26, 40-18-27,  
22 40-18-28, 40-18-29, and 40-18-39, as applicable.

23           (b) The owner, member, partner, or shareholder of an  
24 electing pass-through entity reporting income in accordance  
25 with subsection (a) shall be entitled to a refundable credit

1 in an amount equal to its pro rata or distributive share of  
2 the Alabama income tax paid by the electing pass-through  
3 entity with respect to the corresponding tax year.

4 (c) The Department of Revenue is authorized to waive  
5 any estimated tax penalties and interest assessments for the  
6 quarterly estimated tax payment due on April 15, 2021, which  
7 may otherwise be assessed for individual or pass-through  
8 entity taxpayers who are adversely impacted by the retroactive  
9 effective date of this section.

10 ~~(c)~~ (d) Any provision of Chapters 16 or 18 of Title  
11 40 regarding the liability of an owner, member, partner, or  
12 shareholder of electing pass-through entity for tax imposed by  
13 Chapters 16 or 18 of this title on their pro rata or  
14 distributive share of an electing pass-through entity's income  
15 that is in conflict with this act is hereby superseded.

16 ~~(d)~~ (e) The Department of Revenue may adopt rules  
17 for the implementation and administration of this act.

18 Section 2. Section 40-18-376, Code of Alabama 1975,  
19 as amended by Act 2021-2 of the 2021 Regular Session, is  
20 amended to read as follows:

21 "§40-18-376.

22 "(a) If provided for in the project agreement, the  
23 incentivized company is allowed an investment credit in an  
24 annual amount equal to 1.5 percent of the capital investment

1 incurred as of the beginning of the incentive period, to be  
2 used as follows:

3 "(1) To offset the income taxes found in this  
4 chapter, or as an estimated tax payment of income taxes;

5 "(2) To offset the financial institution excise tax  
6 found in Chapter 16;

7 "(3) To offset the insurance premium tax levied by  
8 Section 27-4A-3(a), or as an estimated payment of insurance  
9 premium tax;

10 "(4) To offset utility taxes; or

11 "(5) To offset state license taxes levied by Article  
12 2 of Chapter 21 of Title 40 of the Code of Alabama 1975.

13 "(6) To offset some combination of the foregoing, so  
14 long as the same credit is used only once.

15 "The incentive period shall begin no earlier than  
16 the placed-in-service date. The incentive period shall be 10  
17 years. Should only some portion of a tax year be included in  
18 the incentive period, the amount of the investment credit  
19 shall be prorated on a daily basis.

20 "(b) A project agreement may specify any one or more  
21 of the following methods by which the investment credit shall  
22 be realized by the incentivized company, so long as a credit  
23 is not utilized more than once:

24 "(1)a. The investment credit may be claimed as a  
25 credit against the taxes in subsection (a) that are actually

1       paid. In any one year, if the credit exceeds the amount of  
2       taxes that are allowed to be offset by the project agreement  
3       and that are owed by the incentivized company, the  
4       incentivized company may carry the credit forward, to the  
5       extent allowed in the project agreement. No carryforward shall  
6       be allowed for more than five years. Rules similar to those  
7       used for Section 40-18-15.2 shall be applied.

8                **"b.** Prior to claiming the investment credit as  
9       provided in this subdivision, the incentivized company shall  
10      submit to the Department of Commerce a certification as to its  
11      capital investment as of the dates specified in the project  
12      agreement. Following such examination as it deems necessary,  
13      the Department of Commerce may certify the information and  
14      deliver the same to the Department of Revenue. Thereafter, the  
15      Department of Revenue shall allow the investment credit.

16               **"(2)** The project agreement may authorize an  
17      incentivized company that is taxed as a flow-through entity to  
18      allocate the credit among some or all of the owners in any  
19      manner specified, regardless of whether the allocation follows  
20      rules similar to 26 U.S.C. § 704(b) and the regulations  
21      thereunder. The owners may then use their allocated share of  
22      the investment credit to offset any of the taxes listed in  
23      subsection (a), as provided in subdivision (1). This  
24      subdivision shall be liberally construed to apply to multiple  
25      levels of companies, to allow the investment credits to be

1 used by those persons bearing the tax burdens of the  
2 qualifying project, and such companies shall include but shall  
3 in no way be limited to flow-through entities, employee stock  
4 ownership plans, mutual funds, real estate investment trusts,  
5 and it shall also apply to offset the income tax liability of  
6 employee/owners of a flow-through entity owned by an employee  
7 stock ownership plan trust.

8 "(3) All or part of the first three years of the  
9 investment credit may be transferred by the incentivized  
10 company and applied by another person or company as follows:

11 "a. A transfer of the credit shall be made by  
12 written, notarized contract.

13 "b. No such transfer shall occur before the contract  
14 is approved by the Secretary of Commerce. In determining  
15 whether to approve any transfer, the Secretary shall make all  
16 of the following findings:

17 "(i) That any year's investment credit will not be  
18 purchased by more than three transferees, unless such  
19 limitation is found by the Secretary of Commerce unnecessarily  
20 to limit the class of potential transferees;

21 "(ii) That the proposed transfer will enhance the  
22 economic benefits of the qualifying project; and

23 "(iii) That the transfer is at a value of at least  
24 85 percent of the present value of the credits.

1           "Upon making affirmative findings on the criteria  
2 set forth above, the Secretary of Commerce shall recommend to  
3 the Governor that the transfer should be approved. Information  
4 about the proposed transfer shall be forwarded to the  
5 Governor, and the Governor may include provisions about the  
6 transfer in the project agreement, or in an amendment thereto  
7 executed by the Governor and the incentivized company.

8           "c. If a transfer is approved, the incentivized  
9 company shall submit to the Department of Commerce the  
10 following:

11           "(i) Certifications as to its capital investment as  
12 of the dates specified in the project agreement. Following  
13 such examination as it deems necessary, the Department of  
14 Commerce may certify the information and deliver the same to  
15 the Department of Revenue.

16           "(ii) Certified information about the transfers,  
17 including identifying information about the transferees and  
18 the amount of credit each transferee should claim. Following  
19 such examination as it deems necessary, the Department of  
20 Commerce may certify the information and deliver the same to  
21 the Department of Revenue.

22           "d. Upon receipt of the certifications from the  
23 Department of Commerce as required by paragraph c., the  
24 Department of Revenue shall thereafter allow the appropriate  
25 amount of the investment credit to offset the tax liability of

1 the transferee for any of the taxes listed in subsection (a)  
2 and, for any project agreements entered into after January 1,  
3 2021 only, state license taxes levied by Article 2 of Chapter  
4 21 of Title 40 of the Code of Alabama 1975. In any one year,  
5 if the investment credit exceeds the amount of taxes that are  
6 allowed to be offset and that are owed by the transferee, the  
7 transferee may carry the credit forward for five years. A  
8 transferee may not make a subsequent transfer of the credit.

9 "e. If a credit is transferred, an incentivized  
10 company that is later determined by the Secretary of Commerce  
11 to have defaulted under the project agreement shall be liable  
12 for the underpayment of tax attributable to the credit and for  
13 penalties and interest thereon. Unless the purchase of the  
14 credits is determined to have been made in a fraudulent  
15 manner, or is a transfer in anticipation of bankruptcy,  
16 insolvency, or closure, a transferee shall not be liable for  
17 the unpaid tax attributable to the credit, or for penalties or  
18 interest thereon.

19 "(c) The realization methods in subsection (b) shall  
20 not create debts of the state within the meaning of Section  
21 213 of the Official ReCompilation of the Constitution of  
22 Alabama of 1901, as amended.

23 "(d) (1) To the extent the investment credit is used  
24 to offset a financial institution excise tax liability, in  
25 making the report required by Section 40-16-6(d), the

1 financial institution receiving the investment credit shall  
2 not take into account the qualifying project, and the  
3 Department of Finance shall adopt rules to ensure that the  
4 credit in no case would reduce the distribution for  
5 municipalities and counties.

6 "(2) To the extent the investment credit is used to  
7 offset an insurance premium tax liability, the Department of  
8 Finance shall adopt rules to ensure that the credit would  
9 ~~reduce the distribution for the Education Trust Fund, but in~~  
10 ~~no case would the investment credit~~ reduce the distributions  
11 ~~for the State General Fund or~~ to the Alabama Special Mental  
12 Health Trust Fund.

13 "(3) To the extent the investment credit is used to  
14 offset liability for the tax imposed by Section 40-21-82 or  
15 Article 2 of Chapter 21 of Title 40 of the Code of Alabama  
16 1975, the Department of Finance shall adopt rules to ensure  
17 that the credit in no case would reduce the distribution for  
18 the Alabama Special Mental Health Trust Fund."

19 Section 3. Section 3 of Act 2021-2 of the 2021  
20 Regular Session, is amended to read as follows:

21 "For the purposes of this act, the following words  
22 and phrases shall have the following meanings:

23 "(1) ACCELERATOR. A company which, for a fixed term,  
24 educates and mentors early-stage technology companies

1 recruited to a location in Alabama, with the goal of  
 2 accelerating the companies' development and growth.

3 "(2) CAPITAL IMPROVEMENTS. Construction and  
 4 rehabilitation expenses of a capital nature at an inland port  
 5 or intermodal facility, the dredging of waterways in the  
 6 immediate vicinity of an inland port, and the expansion of  
 7 onsite storage facilities at an inland port or intermodal  
 8 facility.

9 "(3) ECONOMIC DEVELOPMENT ACTIVITIES. Activities and  
 10 initiatives which enhance the use of, and flow of goods  
 11 through, an inland port or intermodal facility.

12 "(4) ECONOMIC DEVELOPMENT ORGANIZATION. A local  
 13 economic development organization or a state economic  
 14 development organization.

15 "(5) GROWING ALABAMA CREDIT. The credit provided for  
 16 in subsection (a) of Section 6.

17 "(6) INDUSTRY OR BUSINESS. An entity which would  
 18 conduct at a site an activity that is primarily described in  
 19 Section 40-18-372(1), Code of Alabama 1975.

20 "(7) INLAND PORT. Any port on a navigable river away  
 21 from traditional land, air, and coastal borders.

22 "(8) INTERMODAL FACILITY. Any facility which  
 23 interconnects two or more different modes of air, rail, or  
 24 road traffic serving multiple customers, and which involves  
 25 storage facilities.

1           "(9) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION.

2 Organizations which are determined by the Department of  
3 Commerce to meet both of the following criteria: a. The  
4 organization is an Alabama entity not operating for a profit,  
5 including, but not limited to, a municipality or county, an  
6 industrial board or authority, a chamber of commerce, or some  
7 other foundation or Alabama nonprofit corporation charged with  
8 improving a community or region of the state. b. The  
9 organization has a record of supporting or otherwise  
10 participating in economic development ~~activities~~ in some part  
11 of Alabama.

12           "(10) RENEWAL OF ALABAMA COMMISSION. The Renewal of  
13 Alabama Commission created by Section 40-18-402, Code of  
14 Alabama 1975.

15           "(11) SITE. Real property owned by a local economic  
16 development organization and intended for use by an industry  
17 or business.

18           "(12) STATE ECONOMIC DEVELOPMENT ORGANIZATION.

19 Organizations which are determined by the Department of  
20 Commerce to be an Alabama entity not operating for a profit  
21 which is charged with improving the state or a region of the  
22 state and has a record of supporting or otherwise  
23 participating in economic development ~~activities~~ in the  
24 state."

1           Section 4. Section 6 of Act 2021-2 of the 2021  
2 Regular Session, is amended to read as follows:

3           "(a) A taxpayer is allowed a Growing Alabama Credit  
4 to be applied against all of the following:

5           "(1) To offset the income taxes levied in this  
6 chapter, or as an estimated tax payment of income taxes.

7           "(2) To offset the state portion of the financial  
8 institution excise tax levied in Chapter 16 of Title 40 of the  
9 Code of Alabama 1975.

10           "(3) To offset the insurance premium tax levied by  
11 subsection (a) of Section 27-4A-3, Code of Alabama 1975.

12           "(4) To offset state license taxes levied by Article  
13 2 of Chapter 21 of Title 40 of the Code of Alabama 1975.

14           "(b) In no event shall the Growing Alabama Credit  
15 cause a taxpayer's tax liability to be reduced by more than 50  
16 percent. Unused credits may be carried forward for no more  
17 than five years.

18           "(c) Growing Alabama Credits shall be granted to  
19 taxpayers using an online system administered by the  
20 Department of Revenue. The online system shall allow taxpayers  
21 to agree to make a cash contribution to an economic  
22 development organization which was approved by the Renewal of  
23 Alabama Commission, as provided in Section 5. The online  
24 system shall ensure that credits are not granted for  
25 contributions to an economic development organization in

1 excess of the amounts approved by the Renewal of Alabama  
2 Commission, as provided in Section 5.

3 "(d) The cumulative amount of funding approved  
4 pursuant to this section shall not exceed twenty million  
5 dollars (\$20,000,000) in a calendar year. Of that amount, no  
6 more than four million dollars (\$4,000,000) of funding in the  
7 aggregate may be approved for accelerator programs as  
8 described in Section 40-18-376.3 (c) (2), Code of Alabama 1975.

9 "(e) The Renewal of Alabama Commission shall reserve  
10 at least 25 percent of the amounts specified in subsection ~~(c)~~  
11 (d) for projects located in targeted or jumpstart counties as  
12 defined in Section 40-18-376.1, Code of Alabama 1975. In the  
13 event applications are not received and credits are not  
14 allocated for projects in these areas by the close of the  
15 second quarter of the program year, the funds may revert for  
16 allocations of other project applications.

17 "(f) To the extent that a Growing Alabama Credit is  
18 used by a taxpayer, the taxpayer shall not be allowed any  
19 deduction which would have otherwise been allowed for the  
20 taxpayer's contribution. Credits may only be claimed by the  
21 donating ~~individual or corporate entity~~ taxpayer and may not  
22 be assigned or transferred to any other taxpayer. For purposes  
23 of this section, ~~an individual~~ a donating taxpayer includes ~~an~~  
24 ~~individual~~ a taxpayer who is a shareholder of an Alabama S  
25 corporation or a partner or member of a Subchapter K entity

1 that made a contribution to an economic development  
2 organization which was approved by the Renewal of Alabama  
3 Commission.

4 "(g) The Department of Finance shall adopt rules to  
5 ensure that the Growing Alabama Credit in no case would reduce  
6 the distribution for the Alabama Special Mental Health Trust  
7 Fund by using any unencumbered funds."

8 Section 5. Section 1 of this act shall become  
9 effective for tax years beginning on or after January 1, 2021  
10 following its passage and approval by the Governor or its  
11 otherwise becoming law. All other sections shall become  
12 effective immediately upon its passage and approval by the  
13 Governor, or its otherwise becoming law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

---

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 13-APR-21.

Jeff Woodard  
Clerk

Senate	<hr/> 29-APR-21 <hr/>	Amended and Passed
House	<hr/> 29-APR-21 <hr/>	Concurred in Senate Amendment