

1 SB223
2 126333-1
3 By Senator Marsh
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 22-MAR-11

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8 SYNOPSIS: This bill would extend the period of time
9 that granting authorities can abate certain ad
10 valorem taxes and construction related transaction
11 taxes for data processing centers located in the
12 State of Alabama in order to encourage data
13 processing centers to locate in the State of
14 Alabama to up to 30 years. The bill would also
15 include taxes paid on computer software used in a
16 data processing center in the taxes that would be
17 abated.

18 This bill would lower certain employment
19 thresholds so that more data processing centers may
20 qualify.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT
25

26 To amend Sections 40-9B-3, 40-9B-4, and 40-18-193,
27 Code of Alabama 1975, to allow the governing body of a

1 municipality, county, or a public industrial authority to
2 grant abatements of certain ad valorem taxes and construction
3 related transaction taxes to private users of data processing
4 centers for a period of up to thirty years and reduce the
5 corresponding employment thresholds, provided that certain
6 minimum capital investment requirements are met.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. This act shall be known and may be cited
9 as the Alabama Data Processing Center Economic Incentive
10 Enhancement Act of 2011.

11 Section 2. Sections 40-9B-3, 40-9B-4, and 40-18-193,
12 Code of Alabama 1975, are amended to read as follows:

13 "§40-9B-3.

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

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

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

26 "(3) CONSTRUCTION RELATED TRANSACTION TAXES. The
27 transaction taxes imposed by Chapter 23 of this title, or

1 payments required to be made in lieu thereof, on tangible
2 personal property and taxable services incorporated into an
3 industrial development property, and on computer software
4 acquired for use in the operation of a data processing center,
5 the cost of which may be added to capital account with respect
6 to the property, determined without regard to any rule which
7 permits expenditures properly chargeable to capital account to
8 be treated as current expenses.

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

20 "(5) EDUCATION TAXES. Ad valorem taxes, or payments
21 required to be made in lieu thereof, that must, pursuant to
22 the Constitution of Alabama of 1901, as amended, legislative
23 act, or the resolution or other action of the governing board
24 authorizing the tax, be used for educational purposes or for
25 capital improvements for education and local construction
26 related transaction taxes levied for educational purposes or
27 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 fifty new
6 jobs 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,
26 Office of Management and Budget, Sectors 31 (other than
27 National Industry 311811), 32, and 33; Subsectors 423, 424,

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

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

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

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

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

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

15 "1. It produces electricity from:

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

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

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

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

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

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

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

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

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

1 industrial or research enterprise, regardless of whether added
2 to an existing industrial development property.

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

5 "a. A ~~a~~ period equal to the shorter of:

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

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

18 "b. Exclusively with respect to a private user of a
19 data processing center, (i) a period of ten years from and
20 after the date on which private use property is or becomes
21 owned, for federal income tax purposes, by such private user,
22 if the aggregate capital investment in the data processing
23 center by the private user does not exceed \$100,000,000 within
24 10 years from the date on which the private use property is
25 placed in service, (ii) a period of twenty years from and
26 after the date on which private use property is or becomes
27 owned, for federal income tax purposes, by such private user,

1 if the aggregate capital investment in the data processing
2 center by the private user exceeds \$100,000,000 but is not
3 greater than \$300,000,000 within 10 years from the date on
4 which the private use property is placed in service, or (iii)
5 a period of thirty years from and after the date on which
6 private use property is or becomes owned, for federal income
7 tax purposes, by such private user, if the aggregate capital
8 investment in the data processing center by the private user
9 exceeds \$100,000,000 within 10 years from the date on which
10 the private use property is placed in service and exceeds
11 \$300,000,000 within 20 years from the date on which the
12 private use property is placed in service. For purposes of
13 this paragraph b., a private user's aggregate capital
14 investment in a data processing center shall include all real
15 and personal property comprising a data processing center, the
16 costs of which may be capitalized for federal income tax
17 purposes. In no event shall abatements of construction related
18 transaction taxes or noneducational ad valorem taxes granted
19 for a data processing center apply beyond the expiration of
20 the applicable maximum exemption period.

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

23 "(14) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem
24 taxes, or payments required to be made in lieu thereof,
25 imposed by the state, counties, municipalities, and other
26 taxing jurisdictions of Alabama that are not required to be

1 used for educational purposes or for capital improvements for
2 education.

3 "(15) PERSON. Includes any individual, partnership,
4 trust, estate, or corporation.

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

13 "(17) PRIVATE USE INDUSTRIAL PROPERTY. Private use
14 property that also constitutes industrial development
15 property.

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

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

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

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

11 "a. Produces electricity or natural gas, in whole or
12 in part, from biofuels as such term is defined in Section
13 2-2-90(c) (2) or from renewable energy resources as such term
14 is defined in Section 40-18-1(30) with the exception that
15 hydropower production shall be excluded from such definition;
16 or

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

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

25 "(23) STATEMENT OF INTENT. A written statement of
26 intent to claim an abatement provided in this chapter, or to
27 petition for local tax abatement, relating to an industrial or

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

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
26 be abated for periods prior to January 1, 2012. The other

1 abatements allowed by amendments made to this section by Act
2 2008-275 shall become effective after December 31, 2011.

3 "§40-9B-4.

4 "(a) Noneducational ad valorem taxes, construction
5 related transaction taxes, except those local construction
6 related transaction taxes levied for educational purposes or
7 for capital improvements for education, and mortgage and
8 recording taxes, or payments required to be made in lieu
9 thereof, and in the case of a qualifying industrial or
10 research enterprise described in Section 40-9B-3(a)(10)e.
11 which is owned by an entity organized under Chapter 6 of Title
12 37, or by an authority both organized and existing pursuant to
13 Chapter 50A of Title 11, and subject to the payments required
14 to be made in lieu of ad valorem, sales, use, license, and
15 severance taxes imposed by Section 11-50A-7, in addition to
16 the foregoing, all other ad valorem taxes, or payments
17 required to be made in lieu thereof, imposed by the state,
18 counties, municipalities, and other taxing jurisdictions of
19 Alabama, may be abated with respect to private use industrial
20 property and security documents and other recordable documents
21 associated therewith as provided in this chapter.

22 "(b) No abatement of noneducational ad valorem
23 taxes, other ad valorem taxes, or payments required to be made
24 in lieu of the foregoing, may exceed the maximum exemption
25 period. No further abatement with respect to the same private
26 use industrial property may be granted unless there is a major
27 addition to the property, in which event abatement may be

1 granted only with respect to the noneducational ad valorem
2 taxes, and in the case of a qualifying industrial or research
3 enterprise described in Section 40-9B-3(a)(10)e. which is
4 owned by an entity organized under Chapter 6 of Title 37, or
5 by an authority both organized and existing pursuant to
6 Chapter 50A of Title 11, and subject to the payments required
7 to be made in lieu of ad valorem, sales, use, license, and
8 severance taxes imposed by Section 11-50A-7, in addition to
9 the noneducational ad valorem taxes, with respect to all other
10 ad valorem taxes, or payments required to be made in lieu
11 thereof, imposed by the state, counties, municipalities, and
12 other taxing jurisdictions of Alabama, on the major addition
13 by complying with the procedures set forth in this chapter.
14 Notwithstanding the immediately preceding sentence, with
15 respect to a data processing center, an abatement of
16 noneducational ad valorem taxes, other ad valorem taxes, or
17 payments required to be made in lieu thereof, shall apply to
18 all real and personal property comprising a data processing
19 center, the costs of which may be capitalized for federal
20 income tax purposes, acquired at any time during the
21 applicable maximum exemption period, including, but not
22 limited to, computers, software, equipment supporting
23 computing, networking, or data storage; cooling systems,
24 cooling towers, and other temperature infrastructure; power
25 infrastructure for transformation, distribution, or management
26 of electricity used for the maintenance and operation of a
27 data processing center, including, but not limited to,

1 exterior dedicated business-owned substations, backup power
2 generation systems, battery systems, and related
3 infrastructure; and any other equipment necessary for the
4 maintenance and operation of a data processing center.

5 "(c) An abatement of construction related
6 transaction taxes, or payments required to be made in lieu
7 thereof, shall apply only to tangible personal property and
8 taxable services incorporated into a private use industrial
9 property, and on computer software acquired for use in the
10 operation of a data processing center, the cost of which may
11 be added to capital account with respect to the property,
12 determined without regard to any rule which permits
13 expenditures properly chargeable to capital account to be
14 treated as current expenses. No abatement of construction
15 related transaction taxes, or payments required to be made in
16 lieu thereof, shall extend beyond the date the private use
17 industrial property is placed in service; provided, however,
18 that an abatement of construction related transaction taxes,
19 or payments required to be made in lieu thereof, for a data
20 processing center shall apply to all taxable services and
21 acquisitions of real and personal property comprising the data
22 processing center, the costs of which may be capitalized for
23 federal income tax purposes, occurring at any time during the
24 applicable maximum exemption period, including, but not
25 limited to, computers, software, equipment supporting
26 computing, networking, or data storage; cooling systems,
27 cooling towers, and other temperature infrastructure; power

1 infrastructure for transformation, distribution, or management
2 of electricity used for the maintenance and operation of a
3 data processing center, including, but not limited to,
4 exterior dedicated business-owned substations, backup power
5 generation systems, battery systems, and related
6 infrastructure; and any other equipment necessary for the
7 maintenance and operation of a data processing center. No
8 further abatement may be granted for construction related
9 transaction taxes, or payments required to be made in lieu
10 thereof, with respect to the private use industrial property
11 unless incurred in connection with a major addition, in which
12 event only construction related transaction taxes, or payments
13 required to be made in lieu thereof, that may be added to
14 capital account with respect to the major addition, determined
15 without regard to any rule which permits expenditures properly
16 chargeable to capital account to be treated as current
17 expenses, may be abated by complying with the procedures set
18 forth in Act 92-599 as amended, and as amended by Act
19 2008-275. Except in the case of a qualifying industrial or
20 research enterprise described in Section 40-9B-3(a)(10)e.
21 which is owned by an entity organized under Chapter 6 of Title
22 37, or by an authority both organized and existing pursuant to
23 Chapter 50A of Title 11, and subject to the payments required
24 to be made in lieu of ad valorem, sales, use, license, and
25 severance taxes imposed by Section 11-50A-7, no local
26 construction related transaction taxes levied for educational

1 purposes or capital improvements for education, or payments
2 required to be made in lieu thereof, may be abated.

3 "(d) Mortgage and recording taxes with respect to
4 mortgages, deeds, and documents relating to issuing or
5 securing obligations and conveying title into or out of the
6 public authority or county or municipal government with
7 respect to a private use industrial property may be abated by
8 complying with the procedures set forth in this chapter.

9 "(e) An abatement under this section may be granted
10 only with respect to private use industrial property that has
11 not previously been placed in service by the private user who
12 is applying for the abatement or by a person who is a related
13 party, as defined in 26 U.S.C. §267, with respect to such
14 private user.

15 "(f) (1) For a qualifying industrial or research
16 enterprise described in Section 40-9B-3(a)(10)e., which is
17 owned by a utility described in Section 37-4-1(7)a., and which
18 is a coal gasification or liquefaction project or an advanced
19 fossil-based generation project, as such terms are defined in
20 Section 40-18-1, or which utilizes hydropower production, an
21 abatement under this section shall be in an amount equal to
22 100 percent of the state noneducational ad valorem taxes owed
23 for plant, property, and facilities for the maximum exemption
24 period, and in an amount equal to 50 percent of the state
25 construction related transaction taxes. The abatement shall
26 not be subject to the procedures in Section 40-9B-5 or
27 40-9B-6.

1 "(2) For a qualifying industrial or research
2 enterprise described in Section 40-9B-3(a)(10)e., which is
3 owned by a utility described in Section 37-4-1(7)a., and which
4 is a project using an alternative energy resource the
5 abatements for which are not provided in subdivision (1), an
6 abatement under this section shall be in an amount equal to
7 100 percent of the state noneducational ad valorem taxes owed
8 for plant, property, and facilities for the maximum exemption
9 period, and in an amount equal to 50 percent of the state
10 construction related transaction taxes. The abatement shall
11 not be subject to the procedures in Section 40-9B-5 or
12 40-9B-6.

13 "(3) For a qualifying industrial or research
14 enterprise described in Section 40-9B-3(a)(10)e., which is
15 owned by an entity organized under Chapter 6 of Title 37, an
16 abatement under this section shall be in an amount equal to
17 100 percent of the ad valorem taxes owed for plant, property,
18 and facilities for the maximum exemption period, and in an
19 amount equal to 100 percent of the construction related
20 transaction taxes. An abatement of ad valorem taxes levied or
21 imposed by counties or municipalities may be granted as
22 provided in subsection (h). An abatement of the construction
23 related transaction taxes imposed by the governing body of a
24 county pursuant to authority conferred under Article 1 of
25 Chapter 12 of Title 40, or any general, special, or local act
26 of the Legislature, and such transaction taxes imposed by the
27 governing body of a municipality pursuant to authority

1 conferred under Article 3 of Chapter 51 of Title 11, or any
2 general, special, or local act of the Legislature, and all
3 transaction taxes imposed by any other local taxing
4 jurisdiction of Alabama may be granted as provided in
5 subsection (h). The abatement shall not be subject to the
6 procedures in Section 40-9B-5 or 40-9B-6.

7 "(4) For a qualifying industrial or research
8 enterprise described in Section 40-9B-3(a)(10)e., which is
9 owned by an authority both organized and existing pursuant to
10 Chapter 50A of Title 11, and subject to the payments required
11 to be made in lieu of ad valorem, sales, use, license, and
12 severance taxes imposed by Section 11-50A-7, an abatement
13 under this section against the payments required to be made in
14 lieu of taxes imposed by Section 11-50A-7, shall be allowed in
15 an amount equal to 100 percent of the payments required to be
16 made in lieu of ad valorem taxes owed for plant, property, and
17 facilities for the maximum exemption period, and in an amount
18 equal to 100 percent of the payments required to be made in
19 lieu of the construction related transaction taxes, including,
20 without limitation, payments required to be made in lieu of
21 all transaction taxes imposed by the governing body of a
22 county pursuant to authority conferred under Article 1 of
23 Chapter 12 of this title, or any general, special, or local
24 act of the Legislature, all transaction taxes imposed by the
25 governing body of a municipality pursuant to authority
26 conferred under Article 3 of Chapter 51 of Title 11, or any
27 general, special, or local act of the Legislature, and

1 payments required to be made in lieu of all transaction taxes
2 imposed by any other taxing jurisdiction of Alabama. The
3 abatement of such payments required to be made in lieu of
4 local taxes may be granted as provided in subsection (h). The
5 abatement shall not be subject to the procedures in Section
6 40-9B-5 or 40-9B-6.

7 "(5) For a qualifying industrial or research
8 enterprise described in Section 40-9B-3(a)(10)e., which is
9 owned by a utility described in Section 37-4-1(7)a., the
10 abatement for state noneducational ad valorem taxes provided
11 in subdivision (1) or (2) of this subsection, shall be equal
12 to 100 percent of the state noneducational ad valorem taxes
13 owed for plant, property, and facilities for the maximum
14 exemption period if the industrial or research enterprise is
15 located in either of the following:

16 "a. Any area designated or created as an enterprise
17 zone by law or that is governed by the Alabama Enterprise Zone
18 Act.

19 "b. 1. Any Alabama county which is considered to be
20 less developed. A county is considered to be less developed if
21 it has been found to be less developed by the Alabama
22 Department of Industrial Relations using the most current data
23 available from the United States Departments of Labor or
24 Commerce, the United States Bureau of the Census, or any other
25 federal or state agency, and which finding shall be made not
26 later than January 1 of each year thereafter.

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

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

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

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

10 "3. The factors used in ranking counties shall be
11 weighted in the following manner:

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

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

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

15 "(6) a. To the extent that a plant, property, or
16 facility described in Section 40-9B-3(a)(10)e., is owned in
17 whole or in part by one or more private users listed
18 hereinafter in subparagraph c., including, but not limited to,
19 ownership as tenants in common, joint tenants, or owners of an
20 undivided interest, then each private user shall be entitled
21 to the abatement allowed under this section with a percentage
22 limitation equal to the ownership interest percentage of the
23 private user multiplied by the percentage limitation found in
24 this subsection applicable to the private user for the tax, or
25 payment in lieu of tax, in question.

26 "b. To the extent that a plant, property, or
27 facility described in Section 40-9B-3(a)(10)e. is owned by a

1 private user which is itself owned in whole or in part by one
2 or more of the entities listed hereinafter in subparagraph c.,
3 then the private user shall be entitled to the abatement
4 allowed under this section with a percentage limitation equal
5 to the sum, for all owners, of the ownership interest
6 percentage of each owner multiplied by the percentage
7 limitation found in this subsection applicable to the owner
8 for the tax, or payment in lieu of tax, in question.

9 "c. The entities listed in this subparagraph c. are:

10 "1. A utility described in Section 37-4-1(7)a.

11 "2. An entity organized under Chapter 6 of Title 37.

12 "3. An authority both organized and existing
13 pursuant to Chapter 50A of Title 11 and subject to the
14 payments required to be made in lieu of ad valorem, sales,
15 use, license, and severance taxes imposed by Section 11-50A-7.

16 "(7) No abatement for mortgage and recording taxes,
17 local noneducational ad valorem taxes, or local noneducational
18 construction related transaction taxes shall be granted to a
19 qualifying industrial or research enterprise described in
20 Section 40-9B-3(a)(10)e., owned by a utility described in
21 Section 37-4-1(7)a., except upon the approval of the abatement
22 by the governing body of the county or municipality as
23 provided in subsection (b) of Section 40-9B-5.

24 "(g) The abatements of ad valorem taxes and payments
25 in lieu thereof allowed by amendments to this section by Act
26 2008-275 shall become effective for projects for which
27 statements of intent are filed after December 31, 2011. No ad

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

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

13 "§40-18-193.

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

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

1 "(2) For any qualifying project other than a
2 qualifying project described in Sections 40-18-190(a)(13)c. ~~or~~
3 f., 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
26 area and commencing with the date which is not later than one
27 year after the qualifying project is placed in service and

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

8 ~~"If an investing company closes or reduces its level~~
9 ~~of employment at an existing facility in this state and within~~
10 ~~two years following the closing or reduction in its level of~~
11 ~~employment places a qualifying project in service, only the~~
12 ~~number of new employees in excess of the number of employees~~
13 ~~who worked at the existing facility at the time of the closure~~
14 ~~or prior to the reduction in employment shall be deemed to be~~
15 ~~new employees for purposes of this section. Not less than five~~
16 ~~jobs for new employees at the qualifying project which is~~
17 ~~located in a favored geographic area and commencing with the~~
18 ~~date which is not later than one year after the qualifying~~
19 ~~project is placed in service and that the average wages for~~
20 ~~all new employees at the qualifying project be not less than~~
21 ~~the base wage, as defined in Section 40-18-190(a) (1),~~
22 ~~requirement by the date which is not later than one year after~~
23 ~~the qualifying project is placed in service and during each~~
24 ~~year during which all or part of the capital credit is~~
25 ~~available with respect to the qualifying project.~~

26 "(b) The Legislature recognizes that one or more
27 entities may enter into a joint venture in the form of a

1 limited liability company, partnership, or other form of
2 business entity in connection with a qualifying project. It is
3 the intent of this article that the requirements of this
4 article respecting minimum capital costs and employment be
5 applied to the qualifying project and that the capital credit
6 be available and granted to those entities liable for or
7 against which the state income tax is allocated or assessed
8 with respect to the income generated by or arising out of the
9 qualifying project. It shall not be a requirement of this
10 article that the entity employing any new employees be the
11 same entity entitled to receive the capital credit so long as
12 the requirements of capital costs and new employees are
13 implemented and maintained with respect to the qualifying
14 project.

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

23 "(d) The Legislature recognizes that while certain
24 periods specified in this article with respect to the capital
25 credit are measured by calendar years it will be necessary for
26 the capital credit to be applied with respect to the tax years
27 of the recipients of the capital credit. Accordingly, the

1 department is hereby authorized to adopt regulations to
2 provide that the capital credit may be allocated to the tax
3 years of the recipient of the capital credit, including the
4 method of determining the pro rata amount of capital credit,
5 if any, available where the tax year of the recipient of the
6 capital credit will end subsequent to the end of any calendar
7 year period specified in this article.

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

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

1 fails to meet the employment and wage requirements of this
2 section; or (ii) more than nineteen (19) years after the year
3 in which the qualifying project is first placed in service.

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

23 Section 3. The provisions of this act are severable.
24 If any part of this act is declared invalid or
25 unconstitutional, that declaration shall not affect the part
26 which remains.

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