

1 SB373  
2 128829-1  
3 By Senators Williams, Marsh, Orr, Bussman, Holtzclaw, Taylor,  
4 Scofield, Brewbaker, Glover, Blackwell, Beason, Brooks,  
5 Bedford, Figures, Irons, Beasley, Smitherman and Pittman  
6 RFD: Fiscal Responsibility and Accountability  
7 First Read: 07-APR-11

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8 SYNOPSIS: This bill would allow Alabama companies  
9 which undertake certain qualifying projects on  
10 incentives in the form of a retention of a  
11 percentage of state income taxes withheld from  
12 eligible employees.

13 This bill would provide that the State  
14 Industrial Development Authority would make the  
15 final decision as to whether the project qualifies  
16 for the incentive.

17 This bill would provide that the Director of  
18 the Alabama Development Office and the Department  
19 of Revenue would review applications for the  
20 incentive and make a recommendation to the Governor  
21 as to whether the State Industrial Development  
22 Authority should approve the project for the  
23 incentive.

24  
25 A BILL  
26 TO BE ENTITLED  
27 AN ACT

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2           To make legislative findings; to provide  
3 definitions; to provide Alabama companies which undertake  
4 certain qualifying projects on incentives in the form of a  
5 retention of a percentage of the state income taxes withheld  
6 from eligible employees.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8           Section 1. The Legislature makes the following  
9 findings:

10           (1) The economic well-being of the citizens of the  
11 state will be enhanced by the increased development and growth  
12 of industry within the state and it is in the best interests  
13 of the state to provide for certain incentives to allow the  
14 state to promote such economic development through the  
15 recruitment, retention, and expansion of quality projects  
16 within the state.

17           (2) The incentives provided in this act will assist  
18 the state in encouraging the retention of existing jobs that  
19 may otherwise be terminated or displaced, and the creation of  
20 new jobs which may not otherwise exist within the state, and  
21 the incentives will help retain and create sources of tax  
22 revenues for the state and its political subdivisions.

23           (3) The Alabama Development Office and the  
24 Department of Revenue shall implement this act and exercise  
25 all powers as authorized in this act; however, the application  
26 of this act or the offering of any of its incentives as to any  
27 particular approved company shall be in the sole discretion of

1 the State Industrial Development Authority upon the written  
2 recommendation of the ADO Director, the Commissioner of  
3 Revenue, and the Governor.

4 (4) The powers to be granted and the purposes to be  
5 accomplished by this act are proper governmental and public  
6 purposes and the inducement of the recruitment, retention, or  
7 expansion of quality projects within the state is of paramount  
8 importance.

9 (5) Nothing in this act shall be construed to  
10 constitute a guarantee or assumption by the state of any debt  
11 of any individual, company, corporation, or association nor to  
12 authorize the credit of the state to be given, pledged, or  
13 loaned to any individual, company, corporation, or  
14 association.

15 (6) Nothing in this act gives any approved company  
16 any right to the incentives authorized by this act unless the  
17 incentives are approved by the state Industrial Development  
18 Authority pursuant to this act.

19 (7) This act is intended to be revenue-neutral with  
20 regard to employee withholdings and potential refunds.

21 Section 2. The following words and phrases shall  
22 have the following meanings:

23 (1) ADO. The Alabama Development Office.

24 (2) APPROVED COMPANY. Any company recommended by the  
25 ADO Director, the Commissioner of Revenue, and the Governor in  
26 writing and approved by the State Industrial Development

1 Authority in writing pursuant to this act which undertakes a  
2 qualifying project.

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

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

15 b. The costs of acquiring land or rights in land.

16 c. The costs of architectural and engineering  
17 services, including test borings, surveys, estimates, plans  
18 and specifications, preliminary investigations, environmental  
19 mitigation, and supervision of construction, as well as for  
20 the performance of all the duties required by or consequent  
21 upon the acquisition, construction, and installation of a  
22 qualifying project.

23 d. The costs associated with installation of  
24 fixtures and equipment; surveys, including archaeological and  
25 environmental surveys; site tests and inspections; subsurface  
26 site work; excavation; removal of structures, roadways,  
27 cemeteries, and other surface obstructions; filling, grading,

1 paving and provisions for drainage, storm water retention,  
2 installation of utilities, including water, sewer, sewage  
3 treatment, gas, electricity, communications, and similar  
4 facilities; and off-site construction of utility extensions to  
5 the boundaries of the property.

6 e. All other costs of a nature comparable to those  
7 described.

8 f. Costs otherwise defined as capital costs that are  
9 incurred by the approved company where the approved company is  
10 the lessee under a lease that: 1. Has a term of not less than  
11 five years, and 2. is characterized as a capital lease for  
12 federal income tax purposes; provided, that if the project is  
13 a headquarters facility with a lease term of not less than  
14 five years, a research and development facility with a lease  
15 term of not less than 10 years, or a project at which the  
16 predominant trade or business activity conducted is described  
17 in the 2007 North American Industry Classification System,  
18 promulgated by the Executive Office of the President of the  
19 United States, Office of Management and Budget, Sectors 31  
20 (other than National Industry 311811), 32, and 33 with a lease  
21 term of not less than 10 years, the lease may be characterized  
22 as an operating lease for federal income tax purposes in which  
23 event capital costs shall include the net present value of the  
24 payments made by the approved company under the lease computed  
25 using the applicable federal rate for the month in which the  
26 qualifying project is placed in service and for the term most  
27 closely approximating the term of the lease. Capital costs

1 shall not include property owned or leased by the approved  
2 company or a related company before the commencement of the  
3 acquisition, construction, installation, or equipping of the  
4 qualifying project unless such property was physically located  
5 outside the state for a period of at least one year prior to  
6 the date on which the qualifying project was placed in  
7 service.

8 g. Costs either paid or incurred by 1. a public  
9 entity for the benefit of a qualifying project where such  
10 costs are treated as costs paid by an approved company with  
11 respect to the qualifying project for federal income tax  
12 purposes, such costs shall not include amounts contributed by  
13 a public entity to a qualifying project as a capital  
14 contribution or gift except to the extent that an approved  
15 company has cost basis in the contribution or gift for federal  
16 income tax purposes; or 2. a related company to an approved  
17 company to the extent such costs are included in or taken into  
18 account in determining the approved company's capital  
19 expenditures in the qualifying project, whether or not  
20 incurred by an approved company.

21 (4) COMPANY. Any corporation, partnership, limited  
22 liability company, proprietorship, trust, or other business  
23 entity, regardless of form.

24 (5) DATA PROCESSING CENTER. An establishment engaged  
25 predominantly in the provision of complete processing and  
26 specialized reports from data, the provision of automated data  
27 processing and data entry services, the provision of an

1 infrastructure for hosting of data processing services, the  
2 provision of specialized hosting activities, the provision of  
3 application service provisioning, the provision of general  
4 time-share mainframe facilities, or some combination of the  
5 foregoing.

6 (6) ELIGIBLE EMPLOYEES. Those persons, as set forth  
7 in a qualifying project agreement, a. who are being paid  
8 directly by an approved company for working at a qualifying  
9 project for not less than 36 hours per work week, whose  
10 workday is fully dedicated to the qualifying project, b. who  
11 the approved company identifies as its employees to the U.S.  
12 Internal Revenue Service, the Department of Revenue, or the  
13 Department of Industrial Relations on returns or reports filed  
14 with the foregoing, including, but not limited to, IRS Form  
15 941, and c. who are eligible to participate under such benefit  
16 plans as are generally applicable to employees holding  
17 positions of like kind and character within either the  
18 approved company or a related company whose employee benefits  
19 are equivalent to or better than, from an employee  
20 perspective, the approved company's employee benefits.

21 (7) FAVORED GEOGRAPHIC AREA. The definition in  
22 Section 40-18-190, Code of Alabama 1975.

23 (8) HEADQUARTERS FACILITY. Any trade or business  
24 described in the 2007 North American Industry Classification  
25 System, promulgated by the Executive Office of the President  
26 of the United States, Office of Management and Budget,  
27 National Industry 551114.



1           (9) INCENTIVE PERIOD. The time period set forth in a  
2     qualifying project agreement for which an approved company may  
3     receive withholding incentives.

4           (10) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.  
5     Any trade or business described in the 2007 North American  
6     Industry Classification System, promulgated by the Executive  
7     Office of the President of the United States, Office of  
8     Management and Budget, Sectors 31 (other than National  
9     Industry 311811), 32, and 33; Subsectors 423, 424, 493, 511,  
10    and 927; Industry Groups 5417, 5415, and 5182, without regard  
11    to the premise that data processing and related services be  
12    performed in conjunction with a third party; Industries 11331  
13    and 48691; and National Industries 115111, 517110, 541380, and  
14    561422, other than establishments that originate telephone  
15    calls, and includes such trades and businesses as may be  
16    hereafter reclassified in any subsequent publication of the  
17    North American Industry Classification System or other  
18    industry classification system developed in conjunction with  
19    the United States Department of Commerce, or any process or  
20    treatment facility which recycles, reclaims, or converts  
21    materials, which include solids, liquids, or gases, to a  
22    reusable product.

23           (11) NEW OR EXPANSION PROJECT. A project meeting any  
24    one of the following requirements:

25           a. A headquarters facility at which the predominant  
26    trade or business activity conducted will not be the  
27    production of electricity.

1                   b. A data processing center.

2                   c. A research and development facility.

3                   d. A project at which the predominant trade or  
4 business activity conducted will constitute industrial,  
5 warehousing, or research activity.

6                   (12) PROJECT. Any land, building, or other  
7 improvement, and all real and personal properties deemed  
8 necessary or useful in connection therewith, whether or not  
9 previously in existence, located or to be located in the  
10 state.

11                   (13) PUBLIC ENTITY. A public industrial development  
12 board or authority, municipality, or county, or other public  
13 corporation or political subdivision.

14                   (14) QUALIFYING PROJECT. Any new or expansion  
15 project or retention project to be undertaken by an approved  
16 company. Any proposed qualifying project shall be  
17 characterized, in the sole discretion of the State Industrial  
18 Development Authority upon the written recommendation of the  
19 ADO Director, the Commissioner of Revenue, and the Governor,  
20 as either a new or expansion project or a retention project.  
21 In making this characterization, the State Industrial  
22 Development Authority may consider any criteria which it  
23 considers to be appropriate.

24                   (15) QUALIFYING PROJECT AGREEMENT. An executed  
25 agreement entered into between the state and an approved  
26 company that describes the qualifying project and sets forth  
27 the withholding incentives, the incentive period, the number

1 of eligible employees, any termination provisions or  
2 provisions which allow the state to recapture withholding  
3 incentives in the event the approved company fails to meet  
4 certain minimum job or capital investment requirements, or  
5 both, and any other terms and conditions which the state, in  
6 its sole discretion, may require for an approved company to  
7 qualify for and receive withholding incentives.

8 (16) RELATED COMPANY. Any company that is under  
9 common management or control with an approved company.

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

16 (18) RETENTION PROJECT. A project, to be used as  
17 part of an existing facility of a company located in the  
18 state, meeting both of the following requirements:

19 a. The project is described in paragraphs a. through  
20 d. of subdivision (11).

21 b. The capital costs of the project are not less  
22 than the following:

23 1. Two million dollars (\$2,000,000), if the project  
24 is not located in a favored geographic area.

25 2. Five hundred thousand dollars (\$500,000), if the  
26 project is located in a favored geographic area.

1           (19) WITHHOLDING INCENTIVES. Incentives in the form  
2 of the retention by an approved company of a percentage of  
3 state income taxes withheld from eligible employees.

4           Section 3. (a) The ADO Director and the Commissioner  
5 of Revenue shall determine, upon initial application on a form  
6 approved by the ADO and the Department of Revenue, whether to  
7 recommend to the Governor, in writing, that a company be  
8 approved by the State Industrial Development Authority as an  
9 approved company. In making their determination, the ADO  
10 Director and the Commissioner of Revenue may consider any  
11 criteria which they consider, in their sole discretion, to be  
12 appropriate. The ADO Director and the Commissioner of Revenue,  
13 in making their determination, shall conduct a cost/benefit  
14 analysis with respect to a proposed qualifying project and the  
15 withholding incentives proposed to be granted by the State  
16 Industrial Development Authority with respect thereto.

17           (b) After reviewing the recommendation of the ADO  
18 Director and the Commissioner of Revenue, the Governor, in his  
19 or her sole discretion, shall determine whether to recommend  
20 to the State Industrial Development Authority, in writing,  
21 that a company be approved by the State Industrial Development  
22 Authority as an approved company.

23           (c) After reviewing the recommendations of the ADO  
24 Director, the Commissioner of Revenue, and the Governor, the  
25 State Industrial Development Authority, in its sole  
26 discretion, shall determine whether to approve, in writing, a  
27 company as an approved company. In making its determination,

1 the State Industrial Development Authority shall consider  
2 whether approving a company as an approved company serves a  
3 valid public purpose and is in the best interests of the  
4 citizens of the state.

5 (d) After the State Industrial Development Authority  
6 approves a company as an approved company, the approved  
7 company must enter into a qualifying project agreement with  
8 the state in order to qualify for and receive withholding  
9 incentives. The authority, in its sole discretion, may require  
10 that an approved company meet minimum job or capital  
11 investment requirements, or both, to avoid the state  
12 recapturing withholding incentives or terminating the  
13 qualifying project agreement.

14 Section 4. (a) An approved company that meets the  
15 qualifications specified in this act shall qualify to receive  
16 withholding incentives in an amount, determined in the sole  
17 discretion of the State Industrial Development Authority,  
18 equal to:

19 (1) In the case of a new or expansion project, one  
20 percent to 90 percent of the amount of state income taxes  
21 withheld from eligible employees.

22 (2) In the case of a retention project, one percent  
23 to 75 percent of the amount of state income taxes withheld  
24 from eligible employees.

25 (b) The incentive period shall be determined in the  
26 sole discretion of the State Industrial Development Authority  
27 upon written recommendations by the ADO Director, the

1 Commissioner of Revenue, and the Governor, except that in no  
2 event shall the incentive period exceed 20 years after a  
3 qualifying project is placed in service.

4 (c) Withholding incentives shall be reduced or  
5 eliminated with respect to a qualifying project at the time  
6 the sum of all withholding incentives received with respect to  
7 such qualifying project and capital credits received under  
8 Article 7, Chapter 18 of Title 40, Code of Alabama 1975, with  
9 respect to such qualifying project equals 100 percent of the  
10 capital costs of such qualifying project, all to the end that  
11 the aggregate amount of withholding incentives and capital  
12 credits shall not exceed 100 percent of the capital costs of  
13 the qualifying project.

14 (d) An eligible employee is allowed a credit against  
15 his or her state income taxes in an amount equal to 100  
16 percent of the withholding incentives retained by an approved  
17 company from his or her wages during the tax year.

18 Section 5. (a) Within 90 days after the end of a  
19 calendar quarter for which an approved company has qualified  
20 to receive a withholding incentive, the approved company shall  
21 certify to the Department of Revenue, on a form approved by  
22 the Department of Revenue, the actual number of eligible  
23 employees for the calendar quarter, the payroll of eligible  
24 employees for the calendar quarter, and any other information  
25 required by the qualifying project agreement. The Department  
26 of Industrial Relations shall verify the actual number of  
27 eligible employees employed at the qualifying project during

1 the relevant calendar quarter. If the Department of Industrial  
2 Relations is not able to provide such verification utilizing  
3 all available resources, the Department of Revenue may request  
4 such additional information from the approved company as may  
5 be necessary. The Department of Revenue may audit any approved  
6 company periodically to monitor compliance by the approved  
7 company with this act.

8 (b) An approved company may receive withholding  
9 incentives only in accordance with a qualifying project  
10 agreement. If an approved company that is receiving  
11 withholding incentives expands a qualifying project, it may  
12 apply to the ADO and the Department of Revenue for additional  
13 withholding incentives based on the new eligible employees.

14 Section 6. The ADO, the Department of Revenue, and  
15 the State Industrial Development Authority, with the  
16 assistance of other agencies, may adopt rules, in accordance  
17 with the Administrative Procedure Act, and application forms  
18 and other forms necessary to implement their respective duties  
19 and responsibilities under this act.

20 Section 7. All laws or parts of laws which conflict  
21 with this act are repealed.

22 Section 8. This act shall become effective  
23 immediately following its passage and approval by the Governor  
24 or its otherwise becoming law.