

1 HB608
2 131176-1
3 By Representatives Mask, Williams (P), Harper and Hubbard (J)
4 RFD: Economic Development and Tourism
5 First Read: 04-MAY-11

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8 SYNOPSIS: This bill would provide limited economic
9 development incentives to offset business
10 transitional costs to encourage direct investment
11 by qualified projects of a certain minimum capital
12 investment and which create a certain minimum
13 number of new jobs in Alabama and to encourage
14 investing companies which sell products in the
15 United States but which currently manufacture said
16 products elsewhere to locate in Alabama.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 To provide limited economic development incentives
23 to offset business transitional costs to encourage direct
24 investment by qualified projects of a certain minimum capital
25 investment and which create a certain minimum number of new
26 jobs in Alabama and to encourage investing companies which

1 sell products in the United States but which currently
2 manufacture said products elsewhere to locate in Alabama.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This article shall be known as the Tariff
5 Credit Act of 2011.

6 Section 2. As used in this act, the following terms
7 shall have the following meanings:

8 (1) BASE WAGE REQUIREMENT. As used herein, the term
9 "base wage requirement" means an average hourly wage,
10 inclusive of all employees in Alabama, of not less than an
11 amount equal to the median individual income for the State
12 (indexed annually in accordance with the manner provided in
13 Section 25-5-68 of the Code of Alabama 1975) as determined by
14 the United States Bureau of the Census performed decennially,
15 excluding benefits.

16 (2) CAPITAL COSTS. As used herein, the term "capital
17 costs" shall have the same meaning as it is defined in Section
18 40-18-190 of the Code of Alabama 1975.

19 (3) DEPARTMENT. As used herein, the term
20 "department" means the Alabama Department of Revenue.

21 (4) FULL TIME OPERATIONS. As used herein, the term
22 "full time operations" means the operations of the qualifying
23 project at which the investing company has reached the minimum
24 employment level for the qualifying project.

25 (5) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.
26 As used herein, the term "industrial, warehousing, or research
27 activity" means any trade or business described in the 2007

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

18 (6) INVESTING COMPANY. As used herein, the term
19 "investing company" means any corporation, partnership,
20 limited liability company, proprietorship, trust, or other
21 business entity, regardless of form, or a related party,
22 making a qualifying investment.

23 (7) MINIMUM EMPLOYMENT LEVEL. As used herein, the
24 term "minimum employment level" means at least 100 new
25 employees in full time employment with the investing company
26 within the State and which satisfy the base wage requirement.

1 (8) NEW EMPLOYEES. As used herein, the term "new
2 employees" means those persons who have not been previously
3 employed at the site on which the qualifying project is or
4 will be located or by an investing company or companies in the
5 state; will be employed full-time at the qualifying project;
6 and will be subject to the personal income tax imposed by
7 Section 40-18-2 of the Code of Alabama 1975, upon commencement
8 of employment at the qualifying project.

9 (9) PROJECT. As used herein, the term "project"
10 means any land, building, or other improvement, and all real
11 and personal properties deemed necessary or useful in
12 connection therewith, whether or not previously in existence,
13 located or to be located in the state.

14 (10) QUALIFYING INVESTMENT. As used herein, the term
15 "qualifying investment" means the undertaking by one or more
16 investing companies of a qualifying project.

17 (11) QUALIFYING PROJECT. As used herein, the term
18 "qualifying project" means a project to be sponsored or
19 undertaken by one or more investing companies that have a
20 capital cost of not less than one hundred million dollars
21 (\$100,000,000), and at which the predominant trade or business
22 activity conducted will constitute industrial, warehousing, or
23 research activity, and which is expected to employ the minimum
24 employment level.

25 (12) RELATED PARTY. As used herein, the term
26 "related party" means a person or entity that bears a
27 relationship to an investing company described in Section

1 267(b), (c), or (e) of the Internal Revenue Code of 1986, as
2 amended.

3 (13) RESEARCH AND DEVELOPMENT FACILITY. As used
4 herein, the term "research and development facility" means an
5 establishment engaged in conducting original investigations
6 undertaken on a systematic basis to gain new knowledge or
7 applying research findings or other scientific knowledge to
8 create new or significantly improved products or processes, or
9 both.

10 (14) STATE. As used herein, the term "state" means
11 the State of Alabama.

12 (15) TARIFF COSTS. As used herein, the term "tariff
13 costs" means all final and preliminary duties imposed upon an
14 Investing Company pursuant to 19 U.S.C. § 1671 through
15 § 1677(n) during the term of a Qualified Project, including
16 but not limited to cash deposits based upon estimated duties,
17 bonds, or other security based upon estimated rates as
18 outlined in 19 U.S.C. § 1671b(d).

19 (16) TARIFF CREDIT. As used herein, the term "tariff
20 credit" means a discretionary credit up to the total amount of
21 an investing company's tariff costs during the term of a
22 qualifying project, not to exceed \$25 million or twenty-five
23 percent of the capital costs of the qualifying project,
24 whichever is less, such amount to be credited or allowed
25 against the investing company's state income tax liability or
26 which shall be transferable to a transferee taxpayer to be
27 credited or allowed against the transferee taxpayer's state

1 income tax or financial institution excise tax liability
2 during the tax year in which the qualifying project reaches
3 full time operations or in any future tax year for nineteen
4 years following the tax year in which the qualifying project
5 reaches full time operations.

6 (17) TAX YEAR. As used herein, the term "tax year"
7 means the applicable taxable year as the term is defined in
8 Section 40-18-1 of the Code of Alabama 1975.

9 (18) TERM. As used herein, the term "term" means the
10 period of time between the date that a notice of intent is
11 filed pursuant to Section 3 of this act and the date of full
12 time operations of the Qualifying Project, not to exceed
13 twenty-four (24) months.

14 (19) TRANSFEREE TAXPAYER. As used herein, the term
15 "transferee taxpayer" means a person or entity to which a
16 tariff credit is transferred from an investing company.

17 Section 3. At any time prior to the date on which a
18 qualifying project is placed in service, an investing company
19 may file with the department a written statement of intent to
20 file for the tariff credit provided in this article. Such
21 filing by an investing company shall constitute a filing on
22 behalf of the shareholders, partners, members, owners or
23 beneficiaries of the investing company entitled to the tariff
24 credit in accordance with Section 4 of this act. Such
25 statement shall contain a description of the qualifying
26 project; the date on which the acquisition, construction,
27 installation or equipping of the qualifying project was

1 commenced or is expected to commence; the actual or if not
2 known the estimated capital costs of the qualifying project;
3 the actual or if not known the estimated tariff costs incurred
4 or to be incurred by the investing company during the term;
5 the number of new employees to be employed at the qualifying
6 project; the name of each investing company, or the name or
7 names of its shareholders, partners, members, owners or
8 beneficiaries to become entitled to the capital credit; and
9 any other information required by the department.

10 Section 4. (a) The Director of the Alabama
11 Development Office and the Commissioner of the Alabama
12 Department of Revenue shall determine, upon receipt of the
13 notice of intent provided by an investing company pursuant to
14 Section 3 of this act, whether to recommend to the Governor,
15 in writing, that an investing company be approved for a tariff
16 credit. In making their determination, the Director of the
17 Alabama Development Office and the Commissioner of the Alabama
18 Department of Revenue may consider any criteria which they
19 consider, in their sole discretion, to be appropriate. Upon
20 approval by the Governor of a tariff credit for the investing
21 company, the Department shall provide a "Notice of Tariff
22 Credit" to the investing company. At the time said notice is
23 provided, the Department shall specify in writing the total
24 amount of available credit approved by the Governor for the
25 qualifying project and the rights and limitations for use of
26 the tariff credit by the investing company or a transferee
27 taxpayer.

1 (b) After receipt of a Notice of Tariff Credit, the
2 investing company shall certify to the Department the amount
3 of tariff costs incurred by the investing company within
4 ninety days after each calendar year quarter during the term.
5 The investing company may use the tariff credit in the manner
6 allowed by this Act for any quarterly payment up to the total
7 amount of the tariff credit provided to the investing company
8 in the Notice of Tariff Credit.

9 (c) At any time an investing company shall transfer
10 all or any portion of a tariff credit to a transferee
11 taxpayer, it shall provide a "Notice of Tariff Credit
12 Transfer" to the Department in the form and manner to be
13 determined by the Department, including a copy of the Notice
14 of Tariff Credit and all certifications of tariff costs
15 incurred as provided in subsection (b), above. A transferee
16 taxpayer may not use a tariff credit for which a Notice of
17 Tariff Credit has not been filed with the Department.

18 Section 5. (a) The Legislature recognizes that a
19 substantial number of businesses are organized as limited
20 liability companies, partnerships, and other types of business
21 entities and that certain business entities, organized as
22 corporations, elect to be treated as "S" corporations under
23 federal and state tax laws, and that it is essential that the
24 tariff credit amount shall be available on a pass-through
25 basis in the manner hereinafter provided.

26 (b) Each investing company, or its shareholders,
27 partners, members, owners, or beneficiaries shall be entitled

1 to the tariff credit for each tax year of an investing company
2 with respect to which a tariff credit is provided pursuant to
3 this article. The tariff credit shall be allowed as follows:

4 (i) The owner of an investing company which is a
5 proprietorship shall receive a tariff credit against the
6 individual income tax levied by Section 40-18-5 of the Code of
7 Alabama 1975, that otherwise would be owed to the State in any
8 year by the owner with respect to the tariff costs incurred
9 during the project term by an investing company.

10 (ii) An investing company which is an Alabama C
11 corporation as defined in Section 40-18-160 of the Code of
12 Alabama 1975, or which is an Alabama S corporation and which
13 is subject to taxation under Sections 40-18-174 or 40-18-175
14 of the Code of Alabama 1975, shall receive a credit against
15 the corporate income tax levied by Sections 40-18-31,
16 40-18-174, or 40-18-175 of the Code of Alabama 1975, that
17 otherwise would be owed to the state in any year by the
18 investing company with respect to the tariff costs incurred
19 during the project term by an investing company.

20 (iii) The shareholders of an investing company which
21 is an Alabama S corporation as defined in Section 40-18-160 of
22 the Code of Alabama 1975, and whose taxable income is subject
23 to determination under Section 40-18-161 of the Code of
24 Alabama 1975, each shall receive a credit against the
25 individual income tax levied by Section 40-18-5 of the Code of
26 Alabama 1975, that otherwise would be owed to the state in any
27 year by each shareholder of the investing company with respect

1 to the tariff costs incurred during the project term by an
2 investing company.

3 (iv) The partners, members, or owners of an
4 investing company, the income of which is subject to taxation
5 under Section 40-18-24 of the Code of Alabama 1975, each shall
6 receive a credit against the corporate income tax levied by
7 Section 40-18-31 of the Code of Alabama 1975, or against the
8 individual income tax levied by Section 40-18-5 of the Code of
9 Alabama 1975, whichever is applicable to each such partner,
10 member, or owner that otherwise would be owed to the state in
11 any year by each partner, member, or owner of the investing
12 company with respect to the tariff costs incurred during the
13 project term by an investing company.

14 (v) An investing company which is a trust or estate
15 having income subject to taxation under subsection (c) of
16 Section 40-18-25 of the Code of Alabama 1975, shall receive a
17 credit against the income tax levied by Section 40-18-5 of the
18 Code of Alabama 1975, that otherwise would be owed to the
19 state in any year with respect to the tariff costs incurred
20 during the project term by an investing company.

21 (vi) The beneficiaries of an investing company which
22 is a trust or estate the income of which is subject to
23 taxation under subsection (d) of Section 40-18-25 of the Code
24 of Alabama 1975, each shall receive a credit against the
25 corporate income tax levied by Section 40-18-31 of the Code of
26 Alabama 1975, or against the individual income tax levied by
27 Section 40-18-5 of the Code of Alabama 1975, whichever is

1 applicable to each beneficiary, that otherwise would be owed
2 to the state in any year by each beneficiary of the investing
3 company with respect to the tariff costs incurred during the
4 project term by an investing company.

5 (vii) A shareholder, partner, member, owner, or
6 beneficiary which is eligible to receive a credit under
7 subdivision (iii), (iv), or (vi) of this subsection and which
8 is an Alabama S corporation, or which has income which is
9 subject to taxation under Section 40-18-24 of the Code of
10 Alabama 1975, or subsection (d) of Section 40-18-25 of the
11 Code of Alabama 1975, solely for purposes of the application
12 of this subsection, shall be treated as though the
13 shareholder, partner, member, owner, or beneficiary were also
14 an investing company.

15 (viii) No amount described in this subsection shall
16 be carried back by any investing company, shareholders
17 partners, members, owners, or beneficiaries with respect to a
18 prior year.

19 Section 6. The tariff credit shall not be reduced or
20 affected with respect to a qualifying project by the
21 application of the capital credit provided for in Article 7 of
22 Chapter 18 of Title 40 of the Code of Alabama 1975.

23 Section 7. (a) At the time of filing any tax return
24 with the Department in which any tariff credit is claimed
25 under this article, the investing company or a transferee
26 taxpayer, as the case may be, shall also file with the
27 Department an affidavit signed by an officer authorized to act

1 on behalf of the investing company stating that the investing
2 company was, during the tax year for which a tariff credit is
3 claimed and, if applicable, as of the date of the transfer of
4 the tariff credit to a transferee taxpayer, in compliance with
5 this article which are conditions to the qualification for and
6 the availability of the tariff credit herein authorized.

7 (b) For three consecutive tax years after the year
8 in which the term of the qualifying project is completed, at
9 the time of filing its income tax return with the department,
10 the investing company shall also file with the department an
11 affidavit signed by an officer authorized to act on behalf of
12 the investing company stating that the investing company has
13 maintained the minimum employment level during the previous
14 tax year.

15 Section 8. The Department shall report annually to
16 the Legislature and the public as to qualifying projects with
17 respect to which tariff credits are claimed during the year.
18 The report shall be due on the fifth legislative day of each
19 regular session and shall state the number of qualifying
20 projects, the capital costs of each qualifying project and the
21 total amount of tariff credits claimed during the year.

22 Section 9. The Department shall adopt regulations to
23 carry out the provisions of this article and shall promulgate
24 rules respecting the determination of tariff costs and the
25 tariff credit for investing companies and transferee taxpayers
26 and appropriate accounting for any tariff credit transferred
27 to a transferee taxpayer. The Department may be entitled to a

1 fee of up to five percent of the face value of the tariff
2 credit for maintaining the accounting of each tariff credit
3 transferred to a transferee taxpayer, such fee to be paid by
4 the transferee taxpayer. The Department, in its sole
5 discretion, may waive some or all of such fee for good cause
6 shown. The Department may audit any investing company
7 periodically to monitor compliance by the investing company
8 with this act.

9 Section 10. (a) Tariff credits authorized by this
10 article shall not be available for new qualifying projects
11 after December 31, 2015, unless the Legislature, by joint
12 resolution, votes to continue or reinstate the tariff credit
13 for new projects after that date. No action or inaction on the
14 part of the Legislature shall reduce or suspend any tariff
15 credit in any past or future calendar year with respect to any
16 investing company which files a statement of intent pursuant
17 to Section 3 of this act on or prior to December 31, 2015, it
18 being the sole intention of this section that failure of the
19 Legislature to adopt a joint resolution continuing the tariff
20 credit for periods after December 31, 2015, shall affect only
21 the availability of the tariff credit to new qualifying
22 projects after that date, and shall not affect qualifying
23 projects which have established their eligibility to receive
24 tariff credits under Section 4 of this act on or prior to
25 December 31, 2015.

26 (b) If at any time after the receipt of a notice of
27 tariff credit from the state as provided in Section 4 of this

1 act the investing company should receive a refund, credit, or
2 other form of return of its tariff costs from the United
3 States from a final assessment upon which such tariff credit
4 is based, such tariff costs shall be treated as income up to
5 the total value of the tariff credit listed in the notice of
6 tariff credit received by the investing company as of the date
7 of receipt of said refund, credit, or return of tariff costs.
8 The investing company shall pay tax on said income at the rate
9 of one hundred percent, against which no credit under Article
10 7 of Chapter 18 of Title 40 of the Code of Alabama 1975, shall
11 be allowed.

12 (c) If an investing company does not maintain the
13 minimum employment level for a qualifying project for each of
14 the three consecutive tax years after the year in which the
15 term of the qualifying project is completed, as shown by an
16 affidavit provided in Section 7(b) of this act, the State will
17 be entitled to seek return of the tariff credit provided to
18 the investing company in an amount pro rata to the three tax
19 years commencing after the term of the qualifying project is
20 completed.

21 Section 11. The Alabama Development Office and the
22 Department of Revenue, with the assistance of other agencies,
23 may adopt rules, in accordance with the Administrative
24 Procedure Act, and application forms and other forms necessary
25 to implement their respective duties and responsibilities
26 under this act. The administration of this article by the
27 Department shall be governed by the provisions of the

1 Taxpayers' Bill of Rights and the Uniform Revenue Procedures
2 Act contained in Chapter 2A of Title 40 of the Code of Alabama
3 1975.

4 Section 12. This act shall be effective immediately
5 following its passage and approval by the Governor or its
6 otherwise becoming law and shall be effective for tax years
7 and periods beginning after December 31, 2010.