

1 SB477
2 131099-1
3 By Senators Keahey, Williams and Marsh
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 05-MAY-11

SYNOPSIS: This bill would provide economic development tax incentives to offset certain business transactional costs in order to encourage direct capital investment in the state by companies with qualifying projects.

This bill would authorize a company with a qualifying project to claim a tariff credit on state individual or corporate income tax liability for certain capital investment costs associated with the project.

This bill would require a project to create a minimum number of jobs in the state to qualify for the tax incentive.

This bill would provide limits on the amount of the credit that could be claimed and the number of tax years the credit may be claimed.

A BILL
TO BE ENTITLED
AN ACT

1
2 To provide limited economic development incentives
3 to offset business transitional costs; to encourage direct
4 investment by qualified projects of a certain minimum capital
5 investment; to require the qualified project to create a
6 certain minimum number of new jobs in Alabama; to provide
7 limits on the amount of credit a company may claim and the
8 number of years a tax credit may be claimed; and to provide
9 that this act would be effective for tax years beginning
10 December 31, 2010.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act shall be known as the Tariff
13 Credit Act of 2011.

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

16 (1) BASE WAGE REQUIREMENT. An average hourly wage,
17 inclusive of all employees in Alabama, of not less than an
18 amount equal to the median individual income for the state,
19 indexed annually in accordance with the manner provided in
20 Section 25-5-68, Code of Alabama 1975, as determined by the
21 United States Bureau of the Census performed decennially,
22 excluding benefits.

23 (2) DEPARTMENT. The Alabama Department of Revenue.

24 (3) FULL-TIME OPERATIONS. The operations of the
25 qualifying project at which the investing company has reached
26 the minimum employment level for the qualifying project.

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

20 (5) INVESTING COMPANY. Any corporation, partnership,
21 limited liability company, proprietorship, trust, or other
22 business entity, regardless of form, or a related party,
23 making a qualifying investment.

24 (6) MINIMUM EMPLOYMENT LEVEL. 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 (7) NEW EMPLOYEES. Those persons who have not been
2 previously employed at the site on which the qualifying
3 project is or will be located or by an investing company or
4 companies in the state; will be employed full-time at the
5 qualifying project; and will be subject to the personal income
6 tax imposed by Section 40-18-2, Code of Alabama 1975, upon
7 commencement of employment at the qualifying project.

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

13 (9) QUALIFYING INVESTMENT. The undertaking by one or
14 more investing companies of a qualifying project.

15 (10) QUALIFYING PROJECT. A project to be sponsored
16 or undertaken by one or more investing companies that have a
17 capital cost of not less than one hundred million dollars
18 (\$100,000,000), and at which the predominant trade or business
19 activity conducted will constitute industrial, warehousing, or
20 research activity, and which is expected to employ the minimum
21 employment level.

22 (11) RELATED PARTY. A person or entity that bears a
23 relationship to an investing company described in Section
24 267(b), (c), or (e) of the Internal Revenue Code of 1986, as
25 amended.

26 (12) RESEARCH AND DEVELOPMENT FACILITY. An
27 establishment engaged in conducting original investigations

1 undertaken on a systematic basis to gain new knowledge or
2 applying research findings or other scientific knowledge to
3 create new or significantly improved products or processes, or
4 both.

5 (13) STATE. The State of Alabama.

6 (14) TARIFF COSTS. All final and preliminary duties
7 imposed upon an Investing Company pursuant to 19 U.S.C. § 1671
8 through § 1677(n) during the term of a qualified project,
9 including, but not limited to, cash deposits, bonds, or other
10 security based upon estimated rates as outlined in 19 U.S.C. §
11 1671b(d).

12 (15) TARIFF CREDIT. An annual amount equal to an
13 investing company's tariff costs during the term of a
14 qualifying project, not to exceed twenty-five million dollars
15 (\$25,000,000) or 25 percent of the capital costs of the
16 qualifying project, whichever is less, such amount to be
17 credited or allowed against the investing company's state
18 income tax liability or which shall be transferrable to a
19 transferee taxpayer to be credited or allowed against the
20 transferee taxpayer's state income tax or financial
21 institution excise tax liability during the tax year in which
22 the qualifying project reaches full-time operations or in any
23 future tax year for 19 years following the tax year in which
24 the qualifying project reaches full-time operations.

25 (16) TAX YEAR. The applicable taxable year as the
26 term is defined in Section 40-18-1, Code of Alabama 1975.

1 (17) TERM. The period of time between the date that
2 a notice of intent is filed pursuant to Section 3 and the date
3 of full-time operations of the qualifying project, not to
4 exceed 24 months.

5 (18) TRANSFEREE TAXPAYER. A person or entity to
6 which a tariff credit is transferred from an investing
7 company.

8 Section 3. At any time prior to the date on which a
9 qualifying project is placed in service, an investing company
10 may file with the department a written statement of intent to
11 claim the tariff credit provided in this act. Such filing by
12 an investing company shall constitute a filing on behalf of
13 the shareholders, partners, members, owners, or beneficiaries
14 of the investing company entitled to the tariff credit in
15 accordance with Section 4. Such statement shall contain a
16 description of the qualifying project; the date on which the
17 acquisition, construction, installation, or equipping of the
18 qualifying project was commenced or is expected to commence;
19 the actual or, if not known, the estimated capital costs of
20 the qualifying project; the actual or, if not known, the
21 estimated tariff costs incurred or to be incurred by the
22 investing company during the term; the number of new employees
23 to be employed at the qualifying project; the name of each
24 investing company, or the name or names of its shareholders,
25 partners, members, owners, or beneficiaries to become entitled
26 to the capital credit; and any other information required by
27 the department.

1 Section 4. (a) Each investing company, upon filing
2 of the statement required by Section 3 and upon placing in
3 service a qualified project, shall be entitled to the tariff
4 credit, such credit to be memorialized by a Notice of Tariff
5 Credit provided by the department to the investing company. At
6 the time the notice is provided, the department shall specify
7 in writing the rights and limitations for use of the tariff
8 credit by the investing company or a transferee taxpayer.

9 (b) 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 Transfer
12 to the department in the form and manner to be determined by
13 the department, including a copy of the Notice of Tariff
14 Credit. A transferee taxpayer may not use a tariff credit for
15 which a Notice of Tariff Credit has not been filed with the
16 department.

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

25 (b) Each investing company, or its shareholders,
26 partners, members, owners, or beneficiaries shall be entitled
27 to the tariff credit for each tax year of an investing company

1 with respect to which a tariff credit is provided pursuant to
2 this act. The tariff credit shall be allowed as follows:

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

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

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

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

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

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

21 (6) 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, Code of
24 Alabama 1975, each shall receive a credit against the
25 corporate income tax levied by Section 40-18-31, Code of
26 Alabama 1975, or against the individual income tax levied by
27 Section 40-18-5, Code of Alabama 1975, whichever is applicable

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

5 (7) A shareholder, partner, member, owner, or
6 beneficiary which is eligible to receive a credit under
7 subdivision (3), (4), or (6) of this subsection and which is
8 an Alabama S corporation, or which has income which is subject
9 to taxation under Section 40-18-24, Code of Alabama 1975, or
10 subsection (d) of Section 40-18-25, Code of Alabama 1975,
11 solely for purposes of the application of this subsection,
12 shall be treated as though the shareholder, partner, member,
13 owner, or beneficiary were also an investing company.

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

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

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

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

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

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

21 Section 9. The department shall adopt regulations to
22 carry out the provisions of this act and shall promulgate
23 rules respecting the determination of tariff costs and the
24 tariff credit for investing companies and transferee taxpayers
25 and appropriate accounting for any tariff credit transferred
26 to a transferee taxpayer. The department may be entitled to a
27 fee of up to five percent of the face value of the tariff

1 credit for maintaining the accounting of each tariff credit
2 transferred to a transferee taxpayer, such fee to be paid by
3 the transferee taxpayer. The department, in its sole
4 discretion, may waive some or all of such fee for good cause
5 shown.

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

22 (b) At any time after the receipt of a notice of
23 tariff credit from the state as provided in Section 4, if the
24 investing company should receive a refund, credit, or other
25 form of return of its tariff costs from the United States upon
26 which such tariff credit is based, such tariff costs shall be
27 treated as income up to the total value of the tariff credit

1 listed in the notice of tariff credit received by the
2 investing company as of the date of receipt of the refund,
3 credit, or return of tariff costs. The investing company shall
4 pay tax on the income at the rate of 100 percent, against
5 which no credit under Article 7 of Title 40, Code of Alabama
6 1975, shall be allowed.

7 (c) If an investing company does not maintain the
8 minimum employment level for a qualifying project for each of
9 the three consecutive tax years after the year in which the
10 term of the qualifying project is completed, as shown by an
11 affidavit provided in subsection (b) of Section 7, the state
12 shall be entitled to seek return of the tariff credit provided
13 to the investing company in an amount pro rata to the three
14 tax years commencing after the term of the qualifying project
15 is completed.

16 Section 11. The administration of this act by the
17 department shall be governed by the Taxpayers' Bill of Rights
18 and the Uniform Revenue Procedures Act contained in Chapter 2A
19 of Title 40, Code of Alabama 1975.

20 Section 12. The provisions of this act shall be
21 effective for tax years and periods beginning after December
22 31, 2010.