

1 SB477
2 132023-4
3 By Senators Keahey, Williams and Marsh
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 05-MAY-11

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT
10

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

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This article shall be known as the Tariff
20 Credit Act of 2011.

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

23 (1) BASE WAGE REQUIREMENT. As used herein, the term
24 "base wage requirement" means an average hourly wage,
25 inclusive of all employees in Alabama, of not less than an
26 amount equal to the annualized median individual income for
27 the state (indexed annually in accordance with the manner

1 provided in Section 25-5-68 of the Code of Alabama 1975) as
2 determined by the United States Bureau of the Census performed
3 decennially, excluding benefits.

4 (2) CAPITAL COSTS. As used herein, the term "capital
5 costs" shall have the same meaning as it is defined in Section
6 40-18-190 of the Code of Alabama 1975.

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

9 (4) FULL TIME OPERATIONS. As used herein, the term
10 "full time operations" means the operations of the qualifying
11 project at which the investing company has reached the minimum
12 employment level for the qualifying project.

13 (5) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.
14 As used herein, the term "industrial, warehousing, or research
15 activity" means any trade or business described in the 2007
16 North American Industry Classification System, promulgated by
17 the Executive Office of the President of the United States,
18 Office of Management and Budget, Sectors 31 (other than
19 National Industry 311811), 32, and 33; Subsectors 423, 424,
20 511, and 927; Industry Groups 5417, 5415, and 5182 (without
21 regard to the premise that data processing and related
22 services be performed in conjunction with a third-party);
23 Industries 11331 and 48691; and National Industries 115111,
24 517110, 541380, and 561422 (other than establishments that
25 originate telephone calls) and includes such trades and
26 businesses as may be hereafter reclassified in any subsequent
27 publication of the North American Industry Classification

1 System or other industry classification system developed in
2 conjunction with the United States Department of Commerce, or
3 any process or treatment facility which recycles, reclaims, or
4 converts materials, which include solids, liquids, or gases,
5 to a reusable product.

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

11 (7) MINIMUM EMPLOYMENT LEVEL. As used herein, the
12 term "minimum employment level" means at least 100 new
13 employees in full-time employment with the investing company
14 within the state and which satisfy the base wage requirement.

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

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

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

4 (11) QUALIFYING PROJECT. As used herein, the term
5 "qualifying project" means a project to be sponsored or
6 undertaken by one or more investing companies that shall have
7 a capital cost of not less than one hundred million dollars
8 (\$100,000,000), and at which the predominant trade or business
9 activity conducted will constitute industrial, warehousing, or
10 research activity, and which is expected to employ the minimum
11 employment level.

12 (12) RELATED PARTY. As used herein, the term
13 "related party" means a person or entity that bears a
14 relationship to an investing company described in Section
15 267(b), (c), or (e) of the Internal Revenue Code of 1986, as
16 amended.

17 (13) RESEARCH AND DEVELOPMENT FACILITY. As used
18 herein, the term "research and development facility" means an
19 establishment engaged in conducting original investigations
20 undertaken on a systematic basis to gain new knowledge or
21 applying research findings or other scientific knowledge to
22 create new or significantly improved products or processes, or
23 both.

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

26 (15) TARIFF COSTS. As used herein, the term "tariff
27 costs" means all final and preliminary duties imposed upon an

1 Investing Company pursuant to 19 U.S.C. § 1671 through
2 § 1677(n) during the term of a Qualified Project, including
3 but not limited to cash deposits based upon estimated duties,
4 bonds, or other security based upon estimated rates as
5 outlined in 19 U.S.C. § 1671b(d), for products to be produced
6 by a qualifying project.

7 (16) TARIFF CREDIT. As used herein, the term "tariff
8 credit" means a discretionary credit up to the total amount of
9 an investing company's tariff costs during the term of a
10 qualifying project, not to exceed twenty million dollars
11 (\$20,000,000) or 25 percent of the capital costs of the
12 qualifying project, whichever is less. The total tariff credit
13 allowed to any taxpayer is limited to fifty million dollars
14 (\$50,000,000). The tariff credit may be applied against the
15 investing company's state income tax liability or transferred
16 to a transferee taxpayer to be credited or allowed against the
17 transferee taxpayer's state income tax or financial
18 institution excise tax liability for up to three years from
19 the date of a Notice of Tariff Credit provided pursuant to
20 this act; provided, however, that there shall be no credit of
21 any portion of the financial institution excise tax liability
22 due to be distributed to a county pursuant to Section 40-16-6.

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

26 (18) TERM. As used herein, the term "term" means the
27 period of time between the date that a notice of intent is

1 filed pursuant to Section 3 of this act and the date of
2 full-time operations of the Qualifying Project, not to exceed
3 twenty-four (24) months.

4 (19) TRANSFEREE TAXPAYER. As used herein, the term
5 "transferee taxpayer" means a person or entity to which a
6 tariff credit is transferred from an investing company. A
7 transferee taxpayer that receives the tariff credit transfer
8 shall not be allowed to transfer the credit.

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

1 beneficiaries to become entitled to the capital credit; and
2 any other information required by the department.

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

21 (b) After receipt of a Notice of Tariff Credit, the
22 investing company shall certify to the department the amount
23 of tariff costs incurred by the investing company within
24 ninety days after each calendar year quarter during the term.
25 The investing company or transferee taxpayer may use the
26 tariff credit in the manner allowed by this act for any
27 quarterly payment up to the total amount of the tariff credit

1 provided to the investing company in the Notice of Tariff
2 Credit.

3 (c) An investing company is permitted a one-time
4 transfer of all tariff credit to a transferee taxpayer. At the
5 time of transfer, it shall provide a Notice of Change of
6 Ownership, Interest, or Participation of Interest in Tariff
7 Credit Project to the department in the form and manner to be
8 determined by the department, including a copy of the Notice
9 of Tariff Credit and all certifications of tariff costs
10 incurred as provided in subsection (b), above. A transferee
11 taxpayer may not use a tariff credit for which a Notice of
12 Tariff Credit has not been filed with the department.

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

21 (b) Each investing company, or its shareholders,
22 partners, members, owners, or beneficiaries shall be entitled
23 to the tariff credit for each tax year of an investing company
24 with respect to which a tariff credit is provided pursuant to
25 this article. The tariff credit shall be allowed as follows:

26 (i) The owner of an investing company which is a
27 proprietorship shall receive a tariff credit against the

1 individual income tax levied by Section 40-18-5 of the Code of
2 Alabama 1975, that otherwise would be owed to the state in any
3 year by the owner with respect to the tariff costs incurred
4 during the project term by an investing company.

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

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

25 (iv) The partners, members, or owners of an
26 investing company, the income of which is subject to taxation
27 under Section 40-18-24 of the Code of Alabama 1975, each shall

1 receive a credit against the corporate income tax levied by
2 Section 40-18-31 of the Code of Alabama 1975, or against the
3 individual income tax levied by Section 40-18-5 of the Code of
4 Alabama 1975, whichever is applicable to each such partner,
5 member, or owner that otherwise would be owed to the state in
6 any year by each partner, member, or owner of the investing
7 company with respect to the tariff costs incurred during the
8 project term by an investing company.

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

16 (vi) The beneficiaries of an investing company which
17 is a trust or estate the income of which is subject to
18 taxation under subsection (d) of Section 40-18-25 of the Code
19 of Alabama 1975, each shall receive a credit against the
20 corporate income tax levied by Section 40-18-31 of the Code of
21 Alabama 1975, or against the individual income tax levied by
22 Section 40-18-5 of the Code of Alabama 1975, whichever is
23 applicable to each beneficiary, that otherwise would be owed
24 to the state in any year by each beneficiary of the investing
25 company with respect to the tariff costs incurred during the
26 project term by an investing company.

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

11 (viii) No amount described in this subsection shall
12 be carried back by any investing company, shareholders,
13 partners, members, owners, or beneficiaries with respect to a
14 prior year.

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

19 Section 7. (a) At the time of filing any tax return
20 with the department in which any tariff credit is claimed
21 under this article, the investing company or a transferee
22 taxpayer, as the case may be, shall also file with the
23 department an affidavit signed by an officer authorized to act
24 on behalf of the investing company stating that the investing
25 company was, during the tax year for which a tariff credit is
26 claimed and, if applicable, as of the date of the transfer of
27 the tariff credit to a transferee taxpayer, in compliance with

1 this article and the conditions to the qualification for and
2 the availability of the tariff credit herein authorized.

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

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

18 Section 9. The department shall adopt regulations to
19 carry out the provisions of this article and shall promulgate
20 rules respecting the determination of tariff costs and the
21 tariff credit for investing companies and transferee taxpayers
22 and appropriate accounting for any tariff credit transferred
23 to a transferee taxpayer. The department may be entitled to a
24 fee of up to five percent of the face value of the tariff
25 credit for maintaining the accounting of each tariff credit
26 transferred to a transferee taxpayer, such fee to be paid by
27 the transferee taxpayer. The department, in its sole

1 discretion, may waive some or all of such fee for good cause
2 shown. The department may audit any investing company
3 periodically to monitor compliance by the investing company
4 with this act.

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

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

1 the total value of the tariff credit listed in the notice of
2 tariff credit received by the investing company as of the date
3 of receipt of said refund, credit, or return of tariff costs.
4 The investing company shall pay tax on said income at the rate
5 of one hundred percent, against which no credit under Article
6 7 of Chapter 18 of Title 40 of the Code of Alabama 1975, shall
7 be allowed.

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

17 Section 11. The Alabama Development Office and the
18 department of Revenue, with the assistance of other agencies,
19 may adopt rules, in accordance with the Administrative
20 Procedure Act, and application forms and other forms necessary
21 to implement their respective duties and responsibilities
22 under this act. The administration of this article by the
23 department shall be governed by the provisions of the
24 Taxpayers' Bill of Rights and the Uniform Revenue Procedures
25 Act contained in Chapter 2A of Title 40 of the Code of Alabama
26 1975.

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

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2		
3	Senate	
4	Read for the first time and referred to the Senate	
5	committee on Fiscal Responsibility and Account-	
6	ability.....	05-MAY-11
7		
8	Read for the second time and placed on the calen-	
9	dar with 1 substitute and.....	25-MAY-11
10		
11	Read for the third time and passed as amended	31-MAY-11
12		
13	Yeas 21	
14	Nays 6	
15	Abstaining 3	
16		
17	Patrick Harris	
18	Secretary	
19		