

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

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

1 (2) CAPITAL COSTS. As used herein, the term "capital
2 costs" shall have the same meaning as it is defined in Section
3 40-18-190 of the Code of Alabama 1975.

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

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

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

1 converts materials, which include solids, liquids, or gases,
2 to a reusable product.

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

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

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

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

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

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

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

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

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

23 (15) TARIFF COSTS. As used herein, the term "tariff
24 costs" means all final and preliminary duties imposed upon an
25 Investing Company pursuant to 19 U.S.C. § 1671 through
26 § 1677(n) during the term of a Qualified Project, including
27 but not limited to cash deposits based upon estimated duties,

1 bonds, or other security based upon estimated rates as
2 outlined in 19 U.S.C. § 1671b(d), for products to be produced
3 by a qualifying project.

4 (16) TARIFF CREDIT. As used herein, the term "tariff
5 credit" means a discretionary credit up to the total amount of
6 an investing company's tariff costs during the term of a
7 qualifying project, not to exceed \$25 million or twenty-five
8 percent of the capital costs of the qualifying project,
9 ~~whichever is less, such amount to be credited or allowed~~
10 ~~against the investing company's state income tax liability or~~
11 ~~which shall be transferable to a transferee taxpayer to be~~
12 ~~credited or allowed against the transferee taxpayer's state~~
13 whichever is less. The tariff credit may be applied against
14 the investing company's state income tax liability, or
15 transferred to a transferee taxpayer to be credited or allowed
16 against the transferee taxpayer's state income tax or
17 financial institution excise tax liability for up to three
18 years from the date of a Notice of Tariff Credit provided
19 pursuant to this act; provided, however, that there shall be
20 no credit of any portion of the financial institution excise
21 tax liability due to be distributed to a county pursuant to
22 Section 40-16-6 of the Code of Alabama 1975. ~~income tax or~~
23 ~~financial institution excise tax liability during the tax year~~
24 ~~in which the qualifying project reaches full time operations~~
25 ~~or in any future tax year for nineteen years following the tax~~
26 ~~year in which the qualifying project reaches full time~~
27 ~~operations.~~

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

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

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

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

1 project; the name of each investing company, or the name or
2 names of its shareholders, partners, members, owners or
3 beneficiaries to become entitled to the capital credit; and
4 any other information required by the department.

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

23 (b) After receipt of a Notice of Tariff Credit, the
24 investing company shall certify to the Department the amount
25 of tariff costs incurred by the investing company within
26 ninety days after each calendar year quarter during the term.
27 The investing company or transferee taxpayer may use the

1 tariff credit in the manner allowed by this Act for any
2 quarterly payment up to the total amount of the tariff credit
3 provided to the investing company in the Notice of Tariff
4 Credit.

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

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

24 (b) Each investing company, or its shareholders,
25 partners, members, owners, or beneficiaries shall be entitled
26 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 article. The tariff credit shall be allowed as follows:

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

19 (iii) The shareholders of an investing company which
20 is an Alabama S corporation as defined in Section 40-18-160 of
21 the Code of Alabama 1975, and whose taxable income is subject
22 to determination under Section 40-18-161 of the Code of
23 Alabama 1975, each shall receive a credit against the
24 individual income tax levied by Section 40-18-5 of the Code of
25 Alabama 1975, that otherwise would be owed to the state in any
26 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 No company may receive the tariff credit provided
24 for in this bill at the same time as receiving the capital
25 credit provided for in Article 7 of Chapter 18 of Title 40 of
26 the Code of Alabama 1975.

1 Section 7. (a) At the time of filing any tax return
2 with the Department in which any tariff credit is claimed
3 under this article, the investing company or a transferee
4 taxpayer, as the case may be, shall also file with the
5 Department an affidavit signed by an officer authorized to act
6 on behalf of the investing company stating that the investing
7 company was, during the tax year for which a tariff credit is
8 claimed and, if applicable, as of the date of the transfer of
9 the tariff credit to a transferee taxpayer, in compliance with
10 this article ~~which are~~ and the conditions to the qualification
11 for and the availability of the tariff credit herein
12 authorized.

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

21 Section 8. The Department shall report annually to
22 the Legislature, the Legislative Fiscal Office, and the public
23 as to qualifying projects with respect to which tariff credits
24 are claimed during the year. The report shall be due on the
25 fifth legislative day of each regular session and shall state
26 the number of qualifying projects, the capital costs of each

1 qualifying project and the total amount of tariff credits
2 claimed during the year.

3 Section 9. The Department shall adopt regulations to
4 carry out the provisions of this article and shall promulgate
5 rules respecting the determination of tariff costs and the
6 tariff credit for investing companies and transferee taxpayers
7 and appropriate accounting for any tariff credit transferred
8 to a transferee taxpayer. The Department may be entitled to a
9 fee of up to five percent of the face value of the tariff
10 credit for maintaining the accounting of each tariff credit
11 transferred to a transferee taxpayer, such fee to be paid by
12 the transferee taxpayer. The Department, in its sole
13 discretion, may waive some or all of such fee for good cause
14 shown. The Department may audit any investing company
15 periodically to monitor compliance by the investing company
16 with this act.

17 Section 10. (a) Tariff credits authorized by this
18 article shall not be available for new qualifying projects
19 after December 31, 2015, unless the Legislature, by joint
20 resolution, votes to continue or reinstate the tariff credit
21 for new projects after that date. No action or inaction on the
22 part of the Legislature shall reduce or suspend any tariff
23 credit in any past or future calendar year with respect to any
24 investing company which files a statement of intent pursuant
25 to Section 3 of this act on or prior to December 31, 2015, it
26 being the sole intention of this section that failure of the
27 Legislature to adopt a joint resolution continuing the tariff

1 credit for periods after December 31, 2015, shall affect only
2 the availability of the tariff credit to new qualifying
3 projects after that date, and shall not affect qualifying
4 projects which have established their eligibility to receive
5 tariff credits under Section 4 of this act on or prior to
6 December 31, 2015.

7 (b) If at any time after the receipt of a notice of
8 tariff credit from the state as provided in Section 4 of this
9 act the investing company should receive a refund, credit, or
10 other form of return of its tariff costs from the United
11 States from a final assessment upon which such tariff credit
12 is based, such tariff costs shall be treated as income up to
13 the total value of the tariff credit listed in the notice of
14 tariff credit received by the investing company as of the date
15 of receipt of said refund, credit, or return of tariff costs.
16 The investing company shall pay tax on said income at the rate
17 of one hundred percent, against which no credit under Article
18 7 of Chapter 18 of Title 40 of the Code of Alabama 1975, shall
19 be allowed.

20 (c) If an investing company does not maintain the
21 minimum employment level for a qualifying project for each of
22 the three consecutive tax years after the year in which the
23 term of the qualifying project is completed, as shown by an
24 affidavit provided in Section 7(b) of this act, the State will
25 be entitled to seek return of the tariff credit provided to
26 the investing company in an amount pro rata to the three tax

1 years commencing after the term of the qualifying project is
2 completed.

3 Section 11. The Alabama Development Office, the
4 Alabama Securities Commission, and the Department of Revenue,
5 with the assistance of other agencies, may adopt rules, in
6 accordance with the Administrative Procedure Act, and
7 application forms and other forms necessary to implement their
8 respective duties and responsibilities under this act. The
9 administration of this article by the Department shall be
10 governed by the provisions of the Taxpayers' Bill of Rights
11 and the Uniform Revenue Procedures Act contained in Chapter 2A
12 of Title 40 of the Code of Alabama 1975.

13 Section 12. This act shall be effective immediately
14 following its passage and approval by the Governor or its
15 otherwise becoming law and shall be effective for tax years
16 and periods beginning after December 31, 2010.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Economic Devel-
opment and Tourism..... 04-MAY-11

Read for the second time and placed
on the calendar..... 24-MAY-11

Read for the third time and passed
as amended..... 31-MAY-11

Yeas 76, Nays 19, Abstains 0

Greg Pappas
Clerk