

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

SB477

ENROLLED, 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.

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

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

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

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

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

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

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

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

22 (9) PROJECT. As used herein, the term "project"
 23 means any land, building, or other improvement, and all real
 24 and personal properties deemed necessary or useful in

connection therewith, whether or not previously in existence,
located or to be located in the state.

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

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

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

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

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

3 (15) TARIFF COSTS. As used herein, the term "tariff
4 costs" means all final and preliminary duties imposed upon an
5 Investing Company pursuant to 19 U.S.C. § 1671 through
6 § 1677(n) during the term of a Qualified Project, including
7 but not limited to cash deposits based upon estimated duties,
8 bonds, or other security based upon estimated rates as
9 outlined in 19 U.S.C. § 1671b(d), for products to be produced
10 by a qualifying project.

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

1 any portion of the financial institution excise tax liability
2 due to be distributed to a county pursuant to Section 40-16-6.

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

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

11 (19) TRANSFeree TAXPAYER. As used herein, the term
12 "transferee taxpayer" means a person or entity to which a
13 tariff credit is transferred from an investing company. A
14 transferee taxpayer that receives the tariff credit transfer
15 shall not be allowed to transfer the credit.

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

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

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

1 qualifying project and the rights and limitations for use of
2 the tariff credit by the investing company or a transferee
3 taxpayer.

4 (b) After receipt of a Notice of Tariff Credit, the
5 investing company shall certify to the department the amount
6 of tariff costs incurred by the investing company within
7 ninety days after each calendar year quarter during the term.
8 The investing company or transferee taxpayer may use the
9 tariff credit in the manner allowed by this act for any
10 quarterly payment up to the total amount of the tariff credit
11 provided to the investing company in the Notice of Tariff
12 Credit.

13 (c) An investing company is permitted a one-time
14 transfer of all tariff credit to a transferee taxpayer. At the
15 time of transfer, it shall provide a Notice of Change of
16 Ownership, Interest, or Participation of Interest in Tariff
17 Credit Project to the department in the form and manner to be
18 determined by the department, including a copy of the Notice
19 of Tariff Credit and all certifications of tariff costs
20 incurred as provided in subsection (b), above. A transferee
21 taxpayer may not use a tariff credit for which a Notice of
22 Tariff Credit has not been filed with the department.

23 Section 5. (a) The Legislature recognizes that a
24 substantial number of businesses are organized as limited
25 liability companies, partnerships, and other types of business

1 entities and that certain business entities, organized as
2 corporations, elect to be treated as "S" corporations under
3 federal and state tax laws, and that it is essential that the
4 tariff credit amount shall be available on a pass-through
5 basis in the manner hereinafter provided.

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

11 (i) The owner of an investing company which is a
12 proprietorship shall receive a tariff credit against the
13 individual income tax levied by Section 40-18-5 of the Code of
14 Alabama 1975, that otherwise would be owed to the state in any
15 year by the owner with respect to the tariff costs incurred
16 during the project term by an investing company.

17 (ii) An investing company which is an Alabama C
18 corporation as defined in Section 40-18-160 of the Code of
19 Alabama 1975, or which is an Alabama S corporation and which
20 is subject to taxation under Sections 40-18-174 or 40-18-175
21 of the Code of Alabama 1975, shall receive a credit against
22 the corporate income tax levied by Sections 40-18-31,
23 40-18-174, or 40-18-175 of the Code of Alabama 1975, that
24 otherwise would be owed to the state in any year by the

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

3 (iii) The shareholders of an investing company which
4 is an Alabama S corporation as defined in Section 40-18-160 of
5 the Code of Alabama 1975, and whose taxable income is subject
6 to determination under Section 40-18-161 of the Code of
7 Alabama 1975, each shall receive a credit against the
8 individual income tax levied by Section 40-18-5 of the Code of
9 Alabama 1975, that otherwise would be owed to the state in any
10 year by each shareholder of the investing company with respect
11 to the tariff costs incurred during the project term by an
12 investing company.

13 (iv) The partners, members, or owners of an
14 investing company, the income of which is subject to taxation
15 under Section 40-18-24 of the Code of Alabama 1975, each shall
16 receive a credit against the corporate income tax levied by
17 Section 40-18-31 of the Code of Alabama 1975, or against the
18 individual income tax levied by Section 40-18-5 of the Code of
19 Alabama 1975, whichever is applicable to each such partner,
20 member, or owner that otherwise would be owed to the state in
21 any year by each partner, member, or owner of the investing
22 company with respect to the tariff costs incurred during the
23 project term by an investing company.

24 (v) An investing company which is a trust or estate
25 having income subject to taxation under subsection (c) of

1 Section 40-18-25 of the Code of Alabama 1975, shall receive a
2 credit against the income tax levied by Section 40-18-5 of the
3 Code of Alabama 1975, that otherwise would be owed to the
4 state in any year with respect to the tariff costs incurred
5 during the project term by an investing company.

6 (vi) The beneficiaries of an investing company which
7 is a trust or estate the income of which is subject to
8 taxation under subsection (d) of Section 40-18-25 of the Code
9 of Alabama 1975, each shall receive a credit against the
10 corporate income tax levied by Section 40-18-31 of the Code of
11 Alabama 1975, or against the individual income tax levied by
12 Section 40-18-5 of the Code of Alabama 1975, whichever is
13 applicable to each beneficiary, that otherwise would be owed
14 to the state in any year by each beneficiary of the investing
15 company with respect to the tariff costs incurred during the
16 project term by an investing company.

17 (vii) A shareholder, partner, member, owner, or
18 beneficiary which is eligible to receive a credit under
19 subdivision (iii), (iv), or (vi) of this subsection and which
20 is an Alabama S corporation, or which has income which is
21 subject to taxation under Section 40-18-24 of the Code of
22 Alabama 1975, or subsection (d) of Section 40-18-25 of the
23 Code of Alabama 1975, solely for purposes of the application
24 of this subsection, shall be treated as though the

1 shareholder, partner, member, owner, or beneficiary were also
2 an investing company.

3 (viii) No amount described in this subsection shall
4 be carried back by any investing company, shareholders,
5 partners, members, owners, or beneficiaries with respect to a
6 prior year.

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

11 Section 7. (a) At the time of filing any tax return
12 with the department in which any tariff credit is claimed
13 under this article, the investing company or a transferee
14 taxpayer, as the case may be, shall also file with the
15 department an affidavit signed by an officer authorized to act
16 on behalf of the investing company stating that the investing
17 company was, during the tax year for which a tariff credit is
18 claimed and, if applicable, as of the date of the transfer of
19 the tariff credit to a transferee taxpayer, in compliance with
20 this article and the conditions to the qualification for and
21 the availability of the tariff credit herein authorized.

22 (b) For three consecutive tax years after the year
23 in which the term of the qualifying project is completed, at
24 the time of filing its income tax return with the department,
25 the investing company shall also file with the department an

1 affidavit signed by an officer authorized to act on behalf of
2 the investing company stating that the investing company has
3 maintained the minimum employment level during the previous
4 tax year.

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

12 Section 9. The department shall adopt regulations to
13 carry out the provisions of this article and shall promulgate
14 rules respecting the determination of tariff costs and the
15 tariff credit for investing companies and transferee taxpayers
16 and appropriate accounting for any tariff credit transferred
17 to a transferee taxpayer. The department may be entitled to a
18 fee of up to five percent of the face value of the tariff
19 credit for maintaining the accounting of each tariff credit
20 transferred to a transferee taxpayer, such fee to be paid by
21 the transferee taxpayer. The department, in its sole
22 discretion, may waive some or all of such fee for good cause
23 shown. The department may audit any investing company
24 periodically to monitor compliance by the investing company
25 with this act.

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

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

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

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

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

Speaker of the House of Representatives

SB477

Senate 31-MAY-11

I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 02-JUN-11

By: Senator Keahey