

1 HB154  
2 136218-1  
3 By Representatives Williams (D), Wood, Bridges, Buttram,  
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5 Greer, Millican, Long, Johnson (W), Roberts, Rich, McCutcheon,  
6 Faust, Shiver, Nordgren, Fincher, Lee, Henry, Gaston, Moore  
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8 RFD: Economic Development and Tourism  
9 First Read: 07-FEB-12  
10 PFD: 02/03/2012

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8 SYNOPSIS: This bill would extend the period of time  
9 that granting authorities can abate certain ad  
10 valorem taxes and construction related transaction  
11 taxes for data processing centers and warehousing  
12 and storage facilities located in the State of  
13 Alabama in order to encourage data processing  
14 centers to locate in the State of Alabama to up to  
15 30 years. The bill would also include taxes paid on  
16 computer software used in a data processing center  
17 in the taxes that would be abated.

18 This bill would lower certain employment  
19 thresholds so that more data processing centers may  
20 qualify. This bill would expand the definition of  
21 industrial or research enterprises to include  
22 warehousing or research activity.

23 This bill would also provide that  
24 industrial, warehousing, and research activities  
25 are eligible for abatements and capital credits.  
26

27 A BILL

1 TO BE ENTITLED

2 AN ACT

3  
4 To amend Sections 40-9B-3, 40-9B-4, 40-18-190, and  
5 40-18-193, Code of Alabama 1975, to allow the governing body  
6 of a municipality, county, or a public industrial authority to  
7 grant abatements of certain ad valorem taxes and construction  
8 related transaction taxes to private users of data processing  
9 centers for a period of up to thirty years and reduce the  
10 corresponding employment thresholds, provided that certain  
11 minimum capital investment requirements are met.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. This act shall be known and may be cited  
14 as the Alabama Data Processing Center Economic Incentive  
15 Enhancement Act of 2012.

16 Section 2. Sections 40-9B-3, 40-9B-4, 40-18-190, and  
17 40-18-193, Code of Alabama 1975, are amended to read as  
18 follows:

19 "§40-9B-3.

20 "(a) For purposes of this chapter, the following  
21 words and phrases mean:

22 "(1) ABATE, ABATEMENT. A reduction or elimination of  
23 a taxpayer's liability for tax or payments required to be made  
24 in lieu thereof. An abatement of transaction taxes imposed  
25 under Chapter 23 of this title, or payments required to be  
26 made in lieu thereof, shall relieve the seller from the  
27 obligation to collect and pay over the transaction tax as if

1 the sale were to a person exempt, to the extent of the  
2 abatement, from the transaction tax.

3 "(2) ALTERNATIVE ENERGY RESOURCES. The definition  
4 given in Section 40-18-1.

5 "(3) CONSTRUCTION RELATED TRANSACTION TAXES. The  
6 transaction taxes imposed by Chapter 23 of this title, or  
7 payments required to be made in lieu thereof, on tangible  
8 personal property and taxable services incorporated into an  
9 industrial development property, and on computer software  
10 acquired for use in the operation of a data processing center,  
11 the cost of which may be added to capital account with respect  
12 to the property, determined without regard to any rule which  
13 permits expenditures properly chargeable to capital account to  
14 be treated as current expenses.

15 "(4) DATA PROCESSING CENTER. An establishment at  
16 which not less than ~~fifty~~ twenty new jobs are located, the  
17 average annual total compensation, including benefits, of such  
18 new jobs to be not less than forty thousand dollars (\$40,000)  
19 and ~~which~~ such establishment is engaged in the provision of  
20 complete processing and specialized reports from data, the  
21 provision of automated data processing and data entry  
22 services, the provision of an infrastructure for hosting or  
23 data processing services, the provision of specialized hosting  
24 activities, the provision of application service provisioning,  
25 the provision of general time-share mainframe facilities, or  
26 some combination of the foregoing, without regard to whether  
27 any other activities are conducted at the establishment.

1           "(5) EDUCATION TAXES. Ad valorem taxes, or payments  
2           required to be made in lieu thereof, that must, pursuant to  
3           the Constitution of Alabama of 1901, as amended, legislative  
4           act, or the resolution or other action of the governing board  
5           authorizing the tax, be used for educational purposes or for  
6           capital improvements for education and local construction  
7           related transaction taxes levied for educational purposes or  
8           for capital improvements for education.

9           "(6) HEADQUARTERS FACILITY. Any trade or business  
10          described in the 2007 North American Industry Classification  
11          System, promulgated by the Executive Office of the President  
12          of the United States, Office of Management and Budget,  
13          National Industry 551114, at which not less than fifty new  
14          jobs are located.

15          "(7) HYDROPOWER PRODUCTION. The definition given in  
16          Section 40-18-1.

17          "(8) INDUCEMENT. Refers to an agreement, or an  
18          "inducement agreement," entered into between a private user  
19          and a public authority or county or municipal government  
20          and/or a resolution or other official action, an "inducement  
21          resolution," "inducement letter," or "official action" adopted  
22          by a public authority or county or municipal government, in  
23          each case expressing, among other things, the present intent  
24          of such public authority or county or municipal government to  
25          issue bonds in connection with the private use property  
26          therein described.

1           "(9) INDUSTRIAL DEVELOPMENT PROPERTY. Real and/or  
2       personal property acquired in connection with establishing or  
3       expanding an industrial or research enterprise in Alabama.

4           "(10) INDUSTRIAL OR RESEARCH ENTERPRISE.

5           "a. Any trade or business described in the 2007  
6       North American Industry Classification System, promulgated by  
7       the Executive Office of the President of the United States,  
8       Office of Management and Budget, Sectors 31 (other than  
9       National Industry 311811), 32, and 33; Subsectors 423, 424,  
10      493, 511, and 927; Industry Groups 5417, 5415, and 5182  
11      (without regard to the premise that data processing and  
12      related services be performed in conjunction with a  
13      third-party); Industries 11331 and 48691; and National  
14      Industries 115111, 517110, 541380, and 561422 (other than  
15      establishments that originate telephone calls) and includes  
16      such trades and businesses as may be hereafter added by an act  
17      of the Legislature, reclassified in any subsequent publication  
18      of the North American Industry Classification System or other  
19      industry classification system developed in conjunction with  
20      the United States Department of Commerce, or any process or  
21      treatment facility which recycles, reclaims, or converts any  
22      materials, which include solids, liquids, or gases, to a  
23      reusable product.

24          "b. With respect to abatements granted in accordance  
25      with Section 40-9B-9, and only with respect to such  
26      abatements, "industrial or research enterprise" means any  
27      trade or business described in the 2007 North American

1 Industry Classification System within Subsector 493  
2 (Warehousing and Storage), Industry Number 488310 (Port and  
3 Harbor Operations), or Industry Number 488320 (Marine Cargo  
4 Handling), when such trade or business is conducted on  
5 premises in which the Alabama State Port Authority has an  
6 ownership, leasehold, or other possessory interest and such  
7 premises are used as part of the operations of the Alabama  
8 State Port Authority.

9 "c. "Industrial or research enterprise" includes the  
10 above-described trades and business and any others as may  
11 hereafter be reclassified in any subsequent publication of the  
12 NAICS or similar industry classification system developed in  
13 conjunction with the United States Department of Commerce or  
14 Office of Management and Budget.

15 "d. "Industrial or research enterprise" also  
16 includes any underground natural gas storage facility which is  
17 located in the Gulf Opportunity Zone, as that phrase is  
18 defined in the Gulf Opportunity Zone Act of 2005, developed  
19 from existing geologic reservoirs, including, without  
20 limitation, salt domes, and placed in service on or before  
21 December 31, 2013.

22 "e. "Industrial or research enterprise" also  
23 includes any plant, property, or facility that meets both of  
24 the following:

25 "1. It produces electricity from:

1           "(i) Alternative energy resources and has capital  
2 costs of at least one hundred million dollars (\$100,000,000);  
3 or

4           "(ii) Hydropower production and has capital costs of  
5 at least five million dollars (\$5,000,000).

6           "2. All or a portion of the plant, property, or  
7 facility is owned by one or more of the following: A utility  
8 described in Section 37-4-1(7)a., an entity organized under  
9 the provisions of Chapter 6 of Title 37, or an authority both  
10 organized and existing pursuant to the provisions of Chapter  
11 50A of Title 11 and subject to the payments required to be  
12 made in lieu of ad valorem, sales, use, license, and severance  
13 taxes imposed by Section 11-50A-7, or an entity in which one  
14 or more of the foregoing owns an interest.

15           "f. "Industrial or research enterprise" also  
16 includes any headquarters facility.

17           "g. "Industrial or research enterprise" also  
18 includes any data processing center.

19           "h. "Industrial or research enterprise" also  
20 includes any research and development facility.

21           "i. "Industrial or research enterprise" also  
22 includes any renewable energy facility.

23           "(11) MAJOR ADDITION. Any addition to an existing  
24 industrial development property that equals the lesser of: 30  
25 percent of the original cost of the industrial development  
26 property or two million dollars (\$2,000,000). For purposes of  
27 this subsection, the original cost of existing industrial



1 development property shall be the amount of industrial  
2 development property with respect to which an abatement was  
3 granted under this chapter when the property was constructed,  
4 or if the existing industrial development property was  
5 constructed before January 1, 1993, the maximum amount that  
6 would have been allowed if the provisions of this chapter had  
7 applied at the time it was constructed. Only property that  
8 constitutes industrial development property shall be taken  
9 into account in making the determination in the previous  
10 sentence. Major addition shall include any addition costing at  
11 least two million dollars (\$2,000,000) which constitutes an  
12 industrial or research enterprise, regardless of whether added  
13 to an existing industrial development property.

14 "(12) MAXIMUM EXEMPTION PERIOD. Except as provided  
15 in Section 40-9B-11, either

16 "a. ~~A~~ a period equal to the shorter of:

17 "~~1.a.~~ Ten years from and after: ~~1.~~ (i) The date of  
18 initial issuance by a county, city, or public authority of  
19 bonds to finance any costs of a private use property, or ~~2.~~  
20 (ii) If no such bonds are ever issued, the later of: ~~(i)~~ A.  
21 The date on which title to the property was acquired by or  
22 vested in the county, city, or public authority, or ~~(ii)~~ B.  
23 The date on which the property is or becomes owned, for  
24 federal income tax purposes, by a private user; or

25 "~~2.b.~~ The weighted average economic life of the  
26 assets comprising such property, determined consistently with

1 the provisions of 26 U.S.C. § 147(b) and measured from the  
2 date such property is placed in service~~;~~ or

3 "b. Exclusively with respect to a private user of a  
4 data processing center, (i) a period of ten years from and  
5 after the date on which private use property is or becomes  
6 owned, for federal income tax purposes, by such private user,  
7 if the aggregate capital investment in the data processing  
8 center by the private user does not exceed \$100,000,000 within  
9 10 years from the date on which the private user commences the  
10 acquisition, construction, and equipping of the data  
11 processing center, (ii) a period of twenty years from and  
12 after the date on which private use property is or becomes  
13 owned, for federal income tax purposes, by such private user,  
14 if the aggregate capital investment in the data processing  
15 center by the private user exceeds \$100,000,000 but is not  
16 greater than \$300,000,000 within 10 years from the date on  
17 which the private user commences the acquisition,  
18 construction, and equipping of the data processing center, or  
19 (iii) a period of thirty years from and after the date on  
20 which private use property is or becomes owned, for federal  
21 income tax purposes, by such private user, if the aggregate  
22 capital investment in the data processing center by the  
23 private user exceeds \$100,000,000 within 10 years from the  
24 date on which the private user commences the physical work of  
25 constructing and equipping the data processing center and  
26 exceeds \$300,000,000 within 20 years from the date on which  
27 the private user commences the acquisition, construction, and

1 equipping of the data processing center. For purposes of this  
2 paragraph b., a private user's aggregate capital investment in  
3 a data processing center shall include all real and personal  
4 property comprising a data processing center, the costs of  
5 which may be capitalized for federal income tax purposes. In  
6 no event shall abatements of construction related transaction  
7 taxes or noneducational ad valorem taxes granted for a data  
8 processing center apply beyond the expiration of the  
9 applicable maximum exemption period.

10           "(13) MORTGAGE AND RECORDING TAXES. The taxes  
11 imposed by Chapter 22 of this title.

12           "(14) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem  
13 taxes, or payments required to be made in lieu thereof,  
14 imposed by the state, counties, municipalities, and other  
15 taxing jurisdictions of Alabama that are not required to be  
16 used for educational purposes or for capital improvements for  
17 education.

18           "(15) PERSON. Includes any individual, partnership,  
19 trust, estate, or corporation.

20           "(16) PRIVATE USER. Any individual, partnership, or  
21 corporation organized for profit that is or will be treated as  
22 the owner of private use property for federal income tax  
23 purposes, any entity organized under Chapter 6 of Title 37,  
24 and any authority both organized and existing pursuant to  
25 Chapter 50A of Title 11 and subject to the payments required  
26 to be made in lieu of ad valorem, sales, use, license, and  
27 severance taxes imposed by Section 11-50A-7.

1           "(17) PRIVATE USE INDUSTRIAL PROPERTY. Private use  
2 property that also constitutes industrial development  
3 property.

4           "(18) PRIVATE USE PROPERTY. Any real and/or personal  
5 property which is or will be treated as owned by a private  
6 user for federal income tax purposes even though title may be  
7 held by a public authority or municipal or county government;  
8 any real and/or personal property which is owned by any entity  
9 organized under Chapter 6 of Title 37; and any real and/or  
10 personal property which is owned by any authority both  
11 organized and existing pursuant to Chapter 50A of Title 11,  
12 and subject to the payments required to be made in lieu of ad  
13 valorem, sales, use, license, and severance taxes imposed by  
14 Section 11-50A-7.

15           "(19) PUBLIC AUTHORITY. A corporation created for  
16 public purposes pursuant to a provision of the Constitution of  
17 Alabama of 1901, or a general or local law that authorized it  
18 to issue bonds, the interest on which is exempt from the  
19 Alabama income tax, as in effect on May 21, 1992.

20           "(20) PUBLIC INDUSTRIAL AUTHORITY. A public  
21 authority authorized to issue bonds to acquire, construct,  
22 equip, or finance industrial development property.

23           "(21) RENEWABLE ENERGY FACILITY. Any plant,  
24 property, or facility that either:

25           "a. Produces electricity or natural gas, in whole or  
26 in part, from biofuels as such term is defined in Section  
27 2-2-90(c)(2) or from renewable energy resources as such term

1 is defined in Section 40-18-1(30) with the exception that  
2 hydropower production shall be excluded from such definition;  
3 or

4 "b. Produces biofuel as such term is defined in  
5 Section 2-2-90(c)(2).

6 "(22) RESEARCH AND DEVELOPMENT FACILITY. An  
7 establishment engaged in conducting original investigations  
8 undertaken on a systematic basis to gain new knowledge or  
9 applying research findings or other scientific knowledge to  
10 create new or significantly improved products or processes, or  
11 both.

12 "(23) STATEMENT OF INTENT. A written statement of  
13 intent to claim an abatement provided in this chapter, or to  
14 petition for local tax abatement, relating to an industrial or  
15 research enterprise described in paragraph e. of subdivision  
16 (10) of this subsection that is filed with the Department of  
17 Revenue at any time prior to the date on which the industrial  
18 or research enterprise described in paragraph e. of  
19 subdivision (10) of this subsection is placed in service in  
20 accordance with such procedures and on such form or forms as  
21 may be prescribed by the Department of Revenue. Such statement  
22 of intent shall contain a description of the industrial or  
23 research enterprise described in paragraph e. of subdivision  
24 (10) of this subsection; the date on which the acquisition,  
25 construction, installation, or equipping of the industrial or  
26 research enterprise described in paragraph e. of subdivision  
27 (10) of this subsection was commenced or is expected to

1 commence; the actual or, if not known, the estimated capital  
2 costs of the industrial or research enterprise described in  
3 paragraph e. of subdivision (10) of this subsection; the  
4 number of new employees to be employed at the industrial or  
5 research enterprise described in paragraph e. of subdivision  
6 (10) of this subsection; and any other information required by  
7 the Department of Revenue.

8 "(b) The abatements of ad valorem taxes, and  
9 payments in lieu thereof, allowed by amendments to this  
10 section by Act 2008-275 shall become effective for projects  
11 for which statements of intent are filed after December 31,  
12 2011. No ad valorem taxes, or payments in lieu thereof, shall  
13 be abated for periods prior to January 1, 2012. The other  
14 abatements allowed by amendments made to this section by Act  
15 2008-275 shall become effective after December 31, 2011.

16 "§40-9B-4.

17 "(a) Noneducational ad valorem taxes, construction  
18 related transaction taxes, except those local construction  
19 related transaction taxes levied for educational purposes or  
20 for capital improvements for education, and mortgage and  
21 recording taxes, or payments required to be made in lieu  
22 thereof, and in the case of a qualifying industrial or  
23 research enterprise described in Section 40-9B-3(a)(10)e.  
24 which is owned by an entity organized under Chapter 6 of Title  
25 37, or by an authority both organized and existing pursuant to  
26 Chapter 50A of Title 11, and subject to the payments required  
27 to be made in lieu of ad valorem, sales, use, license, and

1 severance taxes imposed by Section 11-50A-7, in addition to  
2 the foregoing, all other ad valorem taxes, or payments  
3 required to be made in lieu thereof, imposed by the state,  
4 counties, municipalities, and other taxing jurisdictions of  
5 Alabama, may be abated with respect to private use industrial  
6 property and security documents and other recordable documents  
7 associated therewith as provided in this chapter.

8           "(b) No abatement of noneducational ad valorem  
9 taxes, other ad valorem taxes, or payments required to be made  
10 in lieu of the foregoing, may exceed the maximum exemption  
11 period. No further abatement with respect to the same private  
12 use industrial property may be granted unless there is a major  
13 addition to the property, in which event abatement may be  
14 granted only with respect to the noneducational ad valorem  
15 taxes, and in the case of a qualifying industrial or research  
16 enterprise described in Section 40-9B-3(a)(10)e. which is  
17 owned by an entity organized under Chapter 6 of Title 37, or  
18 by an authority both organized and existing pursuant to  
19 Chapter 50A of Title 11, and subject to the payments required  
20 to be made in lieu of ad valorem, sales, use, license, and  
21 severance taxes imposed by Section 11-50A-7, in addition to  
22 the noneducational ad valorem taxes, with respect to all other  
23 ad valorem taxes, or payments required to be made in lieu  
24 thereof, imposed by the state, counties, municipalities, and  
25 other taxing jurisdictions of Alabama, on the major addition  
26 by complying with the procedures set forth in this chapter.  
27 Notwithstanding the immediately preceding sentence, with

1 respect to a data processing center, an abatement of  
2 noneducational ad valorem taxes, other ad valorem taxes, or  
3 payments required to be made in lieu thereof, shall apply to  
4 all real and personal property comprising a data processing  
5 center, the costs of which may be capitalized for federal  
6 income tax purposes, acquired at any time during the  
7 applicable maximum exemption period, including, but not  
8 limited to, computers, software, equipment supporting  
9 computing, networking, or data storage; cooling systems,  
10 cooling towers, and other temperature infrastructure; power  
11 infrastructure for transformation, distribution, or management  
12 of electricity used for the maintenance and operation of a  
13 data processing center, including, but not limited to,  
14 exterior dedicated business-owned substations, backup power  
15 generation systems, battery systems, and related  
16 infrastructure; and any other equipment necessary for the  
17 maintenance and operation of a data processing center.

18           "(c) An abatement of construction related  
19 transaction taxes, or payments required to be made in lieu  
20 thereof, shall apply only to tangible personal property and  
21 taxable services incorporated into a private use industrial  
22 property, and on computer software acquired for use in the  
23 operation of a data processing center, the cost of which may  
24 be added to capital account with respect to the property,  
25 determined without regard to any rule which permits  
26 expenditures properly chargeable to capital account to be  
27 treated as current expenses. No abatement of construction



1 related transaction taxes, or payments required to be made in  
2 lieu thereof, shall extend beyond the date the private use  
3 industrial property is placed in service; provided, however,  
4 that an abatement of construction related transaction taxes,  
5 or payments required to be made in lieu thereof, for a data  
6 processing center shall apply to all taxable services and  
7 acquisitions of real and personal property comprising the data  
8 processing center, the costs of which may be capitalized for  
9 federal income tax purposes, occurring at any time during the  
10 applicable maximum exemption period, including, but not  
11 limited to, computers, software, equipment supporting  
12 computing, networking, or data storage; cooling systems,  
13 cooling towers, and other temperature infrastructure; power  
14 infrastructure for transformation, distribution, or management  
15 of electricity used for the maintenance and operation of a  
16 data processing center, including, but not limited to,  
17 exterior dedicated business-owned substations, backup power  
18 generation systems, battery systems, and related  
19 infrastructure; and any other equipment necessary for the  
20 maintenance and operation of a data processing center. No  
21 further abatement may be granted for construction related  
22 transaction taxes, or payments required to be made in lieu  
23 thereof, with respect to the private use industrial property  
24 unless incurred in connection with a major addition, in which  
25 event only construction related transaction taxes, or payments  
26 required to be made in lieu thereof, that may be added to  
27 capital account with respect to the major addition, determined

1 without regard to any rule which permits expenditures properly  
2 chargeable to capital account to be treated as current  
3 expenses, may be abated by complying with the procedures set  
4 forth in Act 92-599 as amended, and as amended by Act  
5 2008-275. Except in the case of a qualifying industrial or  
6 research enterprise described in Section 40-9B-3(a)(10)e.  
7 which is owned by an entity organized under Chapter 6 of Title  
8 37, or by an authority both organized and existing pursuant to  
9 Chapter 50A of Title 11, and subject to the payments required  
10 to be made in lieu of ad valorem, sales, use, license, and  
11 severance taxes imposed by Section 11-50A-7, no local  
12 construction related transaction taxes levied for educational  
13 purposes or capital improvements for education, or payments  
14 required to be made in lieu thereof, may be abated.

15 "(d) Mortgage and recording taxes with respect to  
16 mortgages, deeds, and documents relating to issuing or  
17 securing obligations and conveying title into or out of the  
18 public authority or county or municipal government with  
19 respect to a private use industrial property may be abated by  
20 complying with the procedures set forth in this chapter.

21 "(e) An abatement under this section may be granted  
22 only with respect to private use industrial property that has  
23 not previously been placed in service by the private user who  
24 is applying for the abatement or by a person who is a related  
25 party, as defined in 26 U.S.C. §267, with respect to such  
26 private user.

1           "(f) (1) For a qualifying industrial or research  
2     enterprise described in Section 40-9B-3(a)(10)e., which is  
3     owned by a utility described in Section 37-4-1(7)a., and which  
4     is a coal gasification or liquefaction project or an advanced  
5     fossil-based generation project, as such terms are defined in  
6     Section 40-18-1, or which utilizes hydropower production, an  
7     abatement under this section shall be in an amount equal to  
8     100 percent of the state noneducational ad valorem taxes owed  
9     for plant, property, and facilities for the maximum exemption  
10    period, and in an amount equal to 50 percent of the state  
11    construction related transaction taxes. The abatement shall  
12    not be subject to the procedures in Section 40-9B-5 or  
13    40-9B-6.

14           "(2) For a qualifying industrial or research  
15    enterprise described in Section 40-9B-3(a)(10)e., which is  
16    owned by a utility described in Section 37-4-1(7)a., and which  
17    is a project using an alternative energy resource the  
18    abatements for which are not provided in subdivision (1), an  
19    abatement under this section shall be in an amount equal to  
20    100 percent of the state noneducational ad valorem taxes owed  
21    for plant, property, and facilities for the maximum exemption  
22    period, and in an amount equal to 50 percent of the state  
23    construction related transaction taxes. The abatement shall  
24    not be subject to the procedures in Section 40-9B-5 or  
25    40-9B-6.

26           "(3) For a qualifying industrial or research  
27    enterprise described in Section 40-9B-3(a)(10)e., which is

1 owned by an entity organized under Chapter 6 of Title 37, an  
2 abatement under this section shall be in an amount equal to  
3 100 percent of the ad valorem taxes owed for plant, property,  
4 and facilities for the maximum exemption period, and in an  
5 amount equal to 100 percent of the construction related  
6 transaction taxes. An abatement of ad valorem taxes levied or  
7 imposed by counties or municipalities may be granted as  
8 provided in subsection (h). An abatement of the construction  
9 related transaction taxes imposed by the governing body of a  
10 county pursuant to authority conferred under Article 1 of  
11 Chapter 12 of Title 40, or any general, special, or local act  
12 of the Legislature, and such transaction taxes imposed by the  
13 governing body of a municipality pursuant to authority  
14 conferred under Article 3 of Chapter 51 of Title 11, or any  
15 general, special, or local act of the Legislature, and all  
16 transaction taxes imposed by any other local taxing  
17 jurisdiction of Alabama may be granted as provided in  
18 subsection (h). The abatement shall not be subject to the  
19 procedures in Section 40-9B-5 or 40-9B-6.

20 "(4) For a qualifying industrial or research  
21 enterprise described in Section 40-9B-3(a)(10)e., which is  
22 owned by an authority both organized and existing pursuant to  
23 Chapter 50A of Title 11, and subject to the payments required  
24 to be made in lieu of ad valorem, sales, use, license, and  
25 severance taxes imposed by Section 11-50A-7, an abatement  
26 under this section against the payments required to be made in  
27 lieu of taxes imposed by Section 11-50A-7, shall be allowed in

1 an amount equal to 100 percent of the payments required to be  
2 made in lieu of ad valorem taxes owed for plant, property, and  
3 facilities for the maximum exemption period, and in an amount  
4 equal to 100 percent of the payments required to be made in  
5 lieu of the construction related transaction taxes, including,  
6 without limitation, payments required to be made in lieu of  
7 all transaction taxes imposed by the governing body of a  
8 county pursuant to authority conferred under Article 1 of  
9 Chapter 12 of this title, or any general, special, or local  
10 act of the Legislature, all transaction taxes imposed by the  
11 governing body of a municipality pursuant to authority  
12 conferred under Article 3 of Chapter 51 of Title 11, or any  
13 general, special, or local act of the Legislature, and  
14 payments required to be made in lieu of all transaction taxes  
15 imposed by any other taxing jurisdiction of Alabama. The  
16 abatement of such payments required to be made in lieu of  
17 local taxes may be granted as provided in subsection (h). The  
18 abatement shall not be subject to the procedures in Section  
19 40-9B-5 or 40-9B-6.

20 "(5) For a qualifying industrial or research  
21 enterprise described in Section 40-9B-3(a)(10)e., which is  
22 owned by a utility described in Section 37-4-1(7)a., the  
23 abatement for state noneducational ad valorem taxes provided  
24 in subdivision (1) or (2) of this subsection, shall be equal  
25 to 100 percent of the state noneducational ad valorem taxes  
26 owed for plant, property, and facilities for the maximum

1 exemption period if the industrial or research enterprise is  
2 located in either of the following:

3 "a. Any area designated or created as an enterprise  
4 zone by law or that is governed by the Alabama Enterprise Zone  
5 Act.

6 "b. 1. Any Alabama county which is considered to be  
7 less developed. A county is considered to be less developed if  
8 it has been found to be less developed by the Alabama  
9 Department of Industrial Relations using the most current data  
10 available from the United States Departments of Labor or  
11 Commerce, the United States Bureau of the Census, or any other  
12 federal or state agency, and which finding shall be made not  
13 later than January 1 of each year thereafter.

14 "2. A county shall be found to be less developed if  
15 it is ranked as the forty-fifth through sixty-seventh county,  
16 inclusive, using the following factors:

17 "(i) Percent change in population over the most  
18 recent five-year period.

19 "(ii) Personal per capita income in the last  
20 calendar year for which data are available.

21 "(iii) The average percent employed over the last 12  
22 months for which data are available.

23 "3. The factors used in ranking counties shall be  
24 weighted in the following manner:

25 "(i) Percent change in population (25 percent).

26 "(ii) Personal per capita income (25 percent).

27 "(iii) Average percent employed (50 percent).

1           "(6) a. To the extent that a plant, property, or  
2           facility described in Section 40-9B-3(a)(10)e., is owned in  
3           whole or in part by one or more private users listed  
4           hereinafter in subparagraph c., including, but not limited to,  
5           ownership as tenants in common, joint tenants, or owners of an  
6           undivided interest, then each private user shall be entitled  
7           to the abatement allowed under this section with a percentage  
8           limitation equal to the ownership interest percentage of the  
9           private user multiplied by the percentage limitation found in  
10          this subsection applicable to the private user for the tax, or  
11          payment in lieu of tax, in question.

12          "b. To the extent that a plant, property, or  
13          facility described in Section 40-9B-3(a)(10)e. is owned by a  
14          private user which is itself owned in whole or in part by one  
15          or more of the entities listed hereinafter in subparagraph c.,  
16          then the private user shall be entitled to the abatement  
17          allowed under this section with a percentage limitation equal  
18          to the sum, for all owners, of the ownership interest  
19          percentage of each owner multiplied by the percentage  
20          limitation found in this subsection applicable to the owner  
21          for the tax, or payment in lieu of tax, in question.

22          "c. The entities listed in this subparagraph c. are:

23                "1. A utility described in Section 37-4-1(7)a.

24                "2. An entity organized under Chapter 6 of Title 37.

25                "3. An authority both organized and existing  
26          pursuant to Chapter 50A of Title 11 and subject to the

1 payments required to be made in lieu of ad valorem, sales,  
2 use, license, and severance taxes imposed by Section 11-50A-7.

3 "(7) No abatement for mortgage and recording taxes,  
4 local noneducational ad valorem taxes, or local noneducational  
5 construction related transaction taxes shall be granted to a  
6 qualifying industrial or research enterprise described in  
7 Section 40-9B-3(a)(10)e., owned by a utility described in  
8 Section 37-4-1(7)a., except upon the approval of the abatement  
9 by the governing body of the county or municipality as  
10 provided in subsection (b) of Section 40-9B-5.

11 "(g) The abatements of ad valorem taxes and payments  
12 in lieu thereof allowed by amendments to this section by Act  
13 2008-275 shall become effective for projects for which  
14 statements of intent are filed after December 31, 2011. No ad  
15 valorem taxes, or payments in lieu thereof, shall be abated  
16 for periods prior to January 1, 2012. The other abatements  
17 allowed by amendments made to this section by Act 2008-275  
18 shall become effective after December 31, 2011.

19 "(h) For a qualifying industrial or research  
20 enterprise described in Section 40-9B-3(a)(10)e., the approval  
21 of the abatement of a specific ad valorem tax or construction  
22 related tax levied or imposed by a county or municipality, or  
23 payments required to be made in lieu thereof, shall take  
24 effect only upon adoption of a resolution by the governing  
25 body of that county or municipality approving such abatement  
26 or abatements.

27 "§40-18-190.



1           "(a) The following terms shall have the following  
2 meanings, respectively, when used in this article unless the  
3 context clearly requires otherwise:

4           "(1) BASE WAGE REQUIREMENT.

5           "a. For qualifying projects in which an investing  
6 company files a written statement of intent (Form INT) with  
7 the department on or before May 21, 2009, "base wage  
8 requirement" means either an average hourly wage of not less  
9 than eight dollars (\$8) per hour or an average total  
10 compensation of not less than ten dollars (\$10) per hour,  
11 including benefits.

12           "b. For qualifying projects that are not located in  
13 a favored geographic area and for which an investing company  
14 files a written statement of intent (Form INT) with the  
15 department after May 21, 2009, "base wage requirement" means  
16 an average hourly wage, inclusive of all employees in Alabama,  
17 of not less than the lesser of fifteen dollars (\$15) per hour  
18 (indexed annually in accordance with the manner provided in  
19 Section 25-5-68) or the average hourly wage of the county  
20 where the qualifying project is located (as reported annually  
21 by the Department of Industrial Relations), both excluding  
22 benefits.

23           "c. For qualifying projects that are located in a  
24 favored geographic area and for which an investing company  
25 files a written statement of intent (Form INT) with the  
26 Department after May 21, 2009, "base wage requirement" means  
27 an average hourly wage, inclusive of all employees in Alabama,

1 of not less than the lesser of twelve dollars (\$12) per hour  
2 (indexed annually in accordance with the manner provided in  
3 Section 25-5-68) or the average hourly wage of the county  
4 where the qualifying project is located (as reported annually  
5 by the Department of Industrial Relations), both excluding  
6 benefits.

7 "d. Notwithstanding the foregoing, wages of direct  
8 processors of agriculture food products shall be subject to  
9 the local labor market. In the event that reliable local labor  
10 market statistics are not available, the department shall, by  
11 regulation or ruling, establish a source of wage information  
12 that best represents the average hourly wage rate in Alabama  
13 for direct processors of agriculture food products.

14 "(2) CAPITAL COSTS. All costs and expenses incurred  
15 by one or more investing companies in connection with the  
16 acquisition, construction, installation and equipping of a  
17 qualifying project during the period commencing with the date  
18 on which such acquisition, construction, installation and  
19 equipping commences and ending on the date on which the  
20 qualifying project is placed in service, including, without  
21 limitation all of the following:

22 "a. The costs of acquiring, constructing,  
23 installing, equipping, and financing a qualifying project,  
24 including all obligations incurred for labor and to  
25 contractors, subcontractors, builders, and materialmen.

26 "b. The costs of acquiring land or rights in land  
27 and any cost incidental thereto, including recording fees.

1            "c. The costs of contract bonds and of insurance of  
2 all kinds that may be required or necessary during the  
3 acquisition, construction, or installation of a qualifying  
4 project.

5            "d. The costs of architectural and engineering  
6 services, including test borings, surveys, estimates, plans  
7 and specifications, preliminary investigations, environmental  
8 mitigation and supervision of construction, as well as for the  
9 performance of all the duties required by or consequent upon  
10 the acquisition, construction, and installation of a  
11 qualifying project.

12           "e. The costs associated with installation of  
13 fixtures and equipment; surveys, including archaeological and  
14 environmental surveys; site tests and inspections; subsurface  
15 site work; excavation; removal of structures, roadways,  
16 cemeteries, and other surface obstructions; filling, grading,  
17 paving and provisions for drainage, storm water retention,  
18 installation of utilities, including water, sewer, sewage  
19 treatment, gas, electricity, communications, and similar  
20 facilities; off-site construction of utility extensions to the  
21 boundaries of the property.

22           "f. All other costs of a nature comparable to those  
23 described, including, without limitation, all project costs  
24 which are required to be capitalized for federal income tax  
25 purposes pursuant to 26 U.S.C. § 263A.

26           "g. Costs otherwise defined as capital costs that  
27 are incurred by the investing company where the investing

1 company is the lessee under a lease that: (1) has a term of  
2 not less than five years, and (2) is characterized as a  
3 capital lease for federal income tax purposes; provided, that  
4 if the project is a headquarters facility, the lease may be  
5 characterized as an operating lease for federal income tax  
6 purposes in which event capital costs shall include the net  
7 present value of the payments made by the investing company  
8 under the lease computed using the applicable federal rate for  
9 the month in which the qualifying project is placed in service  
10 and for the term most closely approximating the term of the  
11 lease. Capital costs shall not include property owned or  
12 leased by the investing company or a related party before the  
13 commencement of the acquisition, construction, installation or  
14 equipping of the qualifying project unless such property was  
15 physically located outside the state for a period of at least  
16 one year prior to the date on which the qualifying project was  
17 placed in service.

18 "h. Costs either paid or incurred by (i) a public  
19 industrial development board or authority, city, or county, or  
20 other public corporation or political subdivision (a "public  
21 entity") for the benefit of a qualifying project where such  
22 costs are treated as costs paid by an investing company with  
23 respect to the qualifying project for federal income tax  
24 purposes (such costs shall not include amounts contributed by  
25 a public entity to a qualifying project as a capital  
26 contribution or gift except to the extent that an investing  
27 company has cost basis in the contribution or gift for federal

1 income tax purposes); or (ii) a related party to an investing  
2 company to the extent such costs are included in or taken into  
3 account in determining the investing company's federal income  
4 tax basis in the qualifying project, whether or not incurred  
5 by an investing company.

6 "(3) CAPITAL CREDIT. An annual amount equal to up to  
7 five percent of the capital costs of the qualifying project,  
8 such amount to be credited or allowed in accordance with  
9 Section 40-18-194 and Section 40-18-195 hereof and other  
10 provisions of law, against the state income tax or financial  
11 institution excise tax, as provided in Section 40-18-194,  
12 liability generated by or arising out of the qualifying  
13 project in each of the 20 years commencing with the year  
14 during which the qualifying project is placed in service and  
15 continuing for 19 consecutive years thereafter.

16 "(4) DATA PROCESSING CENTER. An establishment  
17 engaged in the provision of complete processing and  
18 specialized reports from data, the provision of automated data  
19 processing and data entry services, the provision of an  
20 infrastructure for hosting or data processing services, the  
21 provision of specialized hosting activities, the provision of  
22 application service provisioning, the provision of general  
23 time-share mainframe facilities, or some combination of the  
24 foregoing, without regard to whether any other activities are  
25 conducted at the establishment.

26 "(5) DEPARTMENT. The Alabama Department of Revenue.

1           "(6) FAVORED GEOGRAPHIC AREA. Either of the  
2 following:

3           "a. Any area designated or created as an enterprise  
4 zone by law or that is governed by the Alabama Enterprise Zone  
5 Act.

6           "b. 1. Any Alabama county which is considered to be  
7 less developed. A county is considered to be less developed if  
8 it has been found to be less developed by the Alabama  
9 Department of Industrial Relations using the most current data  
10 available from the United States Departments of Labor or  
11 Commerce, the United States Bureau of the Census, or any other  
12 federal or state agency, and which finding shall be made  
13 immediately upon passage of Act 2001-965 and not later than  
14 January 1 of each year thereafter.

15           "2. A county shall be found to be less developed if  
16 it is ranked as the forty-fifth through sixty-seventh county,  
17 inclusive, using the following factors:

18           "(i) Percent change in population over the most  
19 recent five-year period.

20           "(ii) Personal per capita income in the last  
21 calendar year for which data are available.

22           "(iii) The average percent employed over the last 12  
23 months for which data are available.

24           "3. The factors used in ranking counties will be  
25 weighted in the following manner:

26           "(i) Percent change in population (25 percent).

27           "(ii) Personal per capita income (25 percent).

1           "(iii) Average percent employed (50 percent).

2           "(7) HEADQUARTERS FACILITIES.

3           "a. For qualifying projects in which an investing  
4 company files a written statement of intent (Form INT) with  
5 the department on or before May 21, 2009, "headquarters  
6 facilities" means a facility which will serve as the national,  
7 regional or state headquarters for an investing company that  
8 conducts significant business operations outside the state and  
9 will serve as the principal office of the principal operating  
10 officer of the qualifying project. For purposes of this  
11 Article 7, the term "principal operating officer" is defined  
12 as the person with chief responsibility for the daily business  
13 operations of the qualifying project.

14           "b. For qualifying projects in which an investing  
15 company files a written statement of intent (Form INT) with  
16 the department after May 21, 2009, "headquarters facilities"  
17 means any trade or business described in the 2007 North  
18 American Industry Classification System, promulgated by the  
19 Executive Office of the President of the United States, Office  
20 of Management and Budget, National Industry 551114.

21           "(8) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.

22 Any trade or business described in the 2007 North American  
23 Industry Classification System, promulgated by the Executive  
24 Office of the President of the United States, Office of  
25 Management and Budget, Sectors 31 (other than National  
26 Industry 311811), 32, and 33; Subsectors 423, 424, 493, 511,  
27 and 927; Industry Groups 5417, 5415, and 5182 (without regard

1 to the premise that data processing and related services be  
2 performed in conjunction with a third-party); Industries 11331  
3 and 48691; and National Industries 115111, 517110, 541380, and  
4 561422 (other than establishments that originate telephone  
5 calls) and includes such trades and businesses as may be  
6 hereafter reclassified in any subsequent publication of the  
7 North American Industry Classification System or other  
8 industry classification system developed in conjunction with  
9 the United States Department of Commerce, or any process or  
10 treatment facility which recycles, reclaims, or converts  
11 materials, which include solids, liquids, or gases, to a  
12 reusable product.

13 "(9) INVESTING COMPANY. Any corporation,  
14 partnership, limited liability company, proprietorship, trust  
15 or other business entity, regardless of form, making a  
16 qualified investment.

17 "(10) NEW EMPLOYEES. Those persons who have not been  
18 previously employed at the site on which the qualifying  
19 project is or will be located or by an investing company or  
20 companies in the state; will be employed full-time at the  
21 qualifying project; and will be subject to the personal income  
22 tax imposed by Section 40-18-2, upon commencement of  
23 employment at the qualifying project.

24 "(11) PROJECT. Any land, building or other  
25 improvement, and all real and personal properties deemed  
26 necessary or useful in connection therewith, whether or not



1 previously in existence, located or to be located in the  
2 state.

3 "(12) QUALIFYING INVESTMENT. The undertaking by one  
4 or more investing companies of a qualifying project.

5 "(13) QUALIFYING PROJECT. A project to be sponsored  
6 or undertaken by one or more investing companies meeting any  
7 one of the following requirements:

8 "a. A project the capital costs of which are not  
9 less than two million dollars (\$2,000,000), and at which the  
10 predominant trade or business activity conducted will  
11 constitute industrial, warehousing, or research activity.

12 "b. A small business addition the capital costs of  
13 which are not less than one million dollars (\$1,000,000), and  
14 at which the predominant trade or business activity conducted  
15 will constitute industrial, warehousing, or research activity.

16 "c. A headquarters facility the capital costs of  
17 which are not less than two million dollars (\$2,000,000) at  
18 which the predominant trade or business activity conducted  
19 will not be the production of electricity.

20 "d. A project located in a favored geographic area  
21 the capital costs of which are not less than five hundred  
22 thousand dollars (\$500,000), and at which the predominant  
23 trade or business activity conducted will constitute  
24 industrial, warehousing, or research activity.

25 "e. A project owned by a utility described in  
26 Section 37-4-1(7)a., or owned by an investing company which is

1       itself owned by a utility, the capital costs of which are not  
2       less than the following:

3               "1. One hundred million dollars (\$100,000,000), if  
4       the predominant trade or business activity conducted will be  
5       the production of electricity from alternative energy  
6       resources.

7               "2. Five million dollars (\$5,000,000), if the  
8       predominant trade or business activity conducted will be the  
9       production of electricity from hydropower production.

10              "f. A data processing center the capital costs of  
11       which are not less than the following:

12              "1. Two million dollars (\$2,000,000), if the data  
13       processing center is not located in a favored geographic area.

14              "2. Five hundred thousand dollars (\$500,000), if the  
15       data processing center is located in a favored geographic  
16       area.

17              "g. A research and development facility the capital  
18       costs of which are not less than the following:

19              "1. Two million dollars (\$2,000,000), if the  
20       research and development facility is not located in a favored  
21       geographic area.

22              "2. Five hundred thousand dollars (\$500,000), if the  
23       research and development facility is located in a favored  
24       geographic area.

25              "h. A renewable energy facility the capital costs of  
26       which are not less than the following:

1           "1. Two million dollars (\$2,000,000), if the  
2 renewable energy facility is not located in a favored  
3 geographic area.

4           "2. Five hundred thousand dollars (\$500,000), if the  
5 renewable energy facility is located in a favored geographic  
6 area.

7           "(14) RELATED PARTY. A person or entity that bears a  
8 relationship to an investing company described in Section  
9 267(b), (c), or (e) of the Internal Revenue Code of 1986, as  
10 amended.

11           "(15) RENEWABLE ENERGY FACILITY. Any plant,  
12 property, or facility that either:

13           "a. Produces electricity or natural gas, in whole or  
14 in part, from biofuels as such term is defined in Section  
15 2-2-90(c)(2) or from renewable energy resources as such term  
16 is defined in Section 40-18-1(30) with the exception that  
17 hydropower production shall be excluded from such definition;  
18 or

19           "b. Produces biofuel as such term is defined in  
20 Section 2-2-90(c)(2).

21           "(16) RESEARCH AND DEVELOPMENT FACILITY. An  
22 establishment engaged in conducting original investigations  
23 undertaken on a systematic basis to gain new knowledge or  
24 applying research findings or other scientific knowledge to  
25 create new or significantly improved products or processes, or  
26 both.

1           "(17) SMALL BUSINESS ADDITION. Any land, building or  
2 other improvement, and all real and personal properties deemed  
3 necessary or useful in connection therewith, whether or not  
4 previously in existence, to be used as a part of any existing  
5 facility of a business located in the state that, prior to the  
6 date on which the addition is placed in service, had 100 or  
7 fewer full-time employees.

8           "(18) TAX YEAR. The applicable taxable year as the  
9 term is defined in Section 40-18-1(36).

10           "(19) 1993 ACT. Act No. 93-851, H. 27 and Act No.  
11 93-852, H. 83 adopted at the 1993 First Special Session of the  
12 Legislature of Alabama, as amended by Act No. 94-370, S. 559  
13 adopted at the 1994 Regular Session of the Legislature of  
14 Alabama.

15           "(b) The amendments made to this section by Act  
16 2008-275 shall be effective for tax years and periods  
17 beginning after December 31, 2011.

18           "§40-18-193.

19           "(a) It shall be a condition to the receipt of a  
20 capital credit that:

21           "(1) For a qualifying project described in Section  
22 40-18-190(a)(13)c. ~~or f.~~, not less than 50 jobs for new  
23 employees at the qualifying project be provided commencing  
24 with the date which is not later than one year after the  
25 qualifying project is placed in service and that the average  
26 wages for all new employees at the qualifying project be not  
27 less than the base wage requirement by the date which is not

1 later than one year after the qualifying project is placed in  
2 service and during each year during which all or any part of  
3 the capital credit is available with respect to the qualifying  
4 project.

5 "(2) For any qualifying project other than a  
6 qualifying project described in Sections 40-18-190(a)(13)c. ~~or~~  
7 ~~f.~~, either of the following occur:

8 "a. Not less than 20 jobs for new employees at a  
9 qualifying project except as otherwise provided in this  
10 subdivision and commencing with the date which is not later  
11 than one year after the qualifying project is placed in  
12 service and that the average wages for all new employees at  
13 the qualifying project be not less than the base wage  
14 requirement by the date which is not later than one year after  
15 the qualifying project is placed in service and during each  
16 year during which all or any part of the capital credit is  
17 available with respect to the qualifying project.

18 "b. Not less than 15 jobs for new employees at the  
19 qualifying project which is a small business addition be  
20 provided commencing with the date which is not later than one  
21 year after the qualifying project is placed in service and  
22 that the average wages for all new employees at the qualifying  
23 project be not less than the base wage requirement by the date  
24 which is not later than one year after the qualifying project  
25 is placed in service and during each year during which all or  
26 any part of the capital credit is available with respect to  
27 the qualifying project.

1            "c. Not less than five jobs for new employees at the  
2            qualifying project which is located in a favored geographic  
3            area and commencing with the date which is not later than one  
4            year after the qualifying project is placed in service and  
5            that the average wages for all new employees at the qualifying  
6            project be not less than the base wage, as defined in Section  
7            40-18-190(a) (1), requirement by the date which is not later  
8            than one year after the qualifying project is placed in  
9            service and during each year during which all or part of the  
10           capital credit is available with respect to the qualifying  
11           project.

12           "If an investing company closes or reduces its level  
13           of employment at an existing facility in this state and within  
14           two years following the closing or reduction in its level of  
15           employment places a qualifying project in service, only the  
16           number of new employees in excess of the number of employees  
17           who worked at the existing facility at the time of the closure  
18           or prior to the reduction in employment shall be deemed to be  
19           new employees for purposes of this section.

20           "(b) The Legislature recognizes that one or more  
21           entities may enter into a joint venture in the form of a  
22           limited liability company, partnership, or other form of  
23           business entity in connection with a qualifying project. It is  
24           the intent of this article that the requirements of this  
25           article respecting minimum capital costs and employment be  
26           applied to the qualifying project and that the capital credit  
27           be available and granted to those entities liable for or

1 against which the state income tax is allocated or assessed  
2 with respect to the income generated by or arising out of the  
3 qualifying project. It shall not be a requirement of this  
4 article that the entity employing any new employees be the  
5 same entity entitled to receive the capital credit so long as  
6 the requirements of capital costs and new employees are  
7 implemented and maintained with respect to the qualifying  
8 project.

9 "(c) A change of ownership or assignment of interest  
10 in any qualifying project shall not qualify the qualifying  
11 project or any taxpayer to receive any additional capital  
12 credits, and the purchaser, assignee, or successor of the  
13 qualifying project or interests therein shall be entitled to  
14 the capital credit upon the same conditions and for the same  
15 period as the investing company or companies originally  
16 entitled to the capital credit.

17 "(d) The Legislature recognizes that while certain  
18 periods specified in this article with respect to the capital  
19 credit are measured by calendar years it will be necessary for  
20 the capital credit to be applied with respect to the tax years  
21 of the recipients of the capital credit. Accordingly, the  
22 department is hereby authorized to adopt regulations to  
23 provide that the capital credit may be allocated to the tax  
24 years of the recipient of the capital credit, including the  
25 method of determining the pro rata amount of capital credit,  
26 if any, available where the tax year of the recipient of the

1 capital credit will end subsequent to the end of any calendar  
2 year period specified in this article.

3 "(e) A company shall be considered to have met the  
4 employment and wage requirements for the portion of the year  
5 following the date upon which such requirements are first met  
6 and for each full year thereafter (such portion of a year and  
7 each full year thereafter during the 20 year credit period is  
8 hereinafter referred to as a "compliance year") if the  
9 employment requirement is satisfied for at least 11/12 of each  
10 compliance year and the wage requirement is met based on an  
11 average determined over each compliance year.

12 "(f) (1) Any investing company that meets the  
13 employment and wage requirements of this section by a date  
14 which is not later than one year after the date on which the  
15 qualifying project is placed in service, but fails to meet  
16 such requirements in any subsequent compliance year, may still  
17 claim the capital credit for each compliance year in which  
18 such investing company again meets the employment and wage  
19 requirements of this section. In no event, however, shall an  
20 investing company be able to claim a capital credit in a  
21 compliance year beginning: (i) after the third compliance year  
22 (whether or not consecutive) in which the investing company  
23 fails to meet the employment and wage requirements of this  
24 section; or (ii) more than nineteen (19) years after the year  
25 in which the qualifying project is first placed in service.

26 "(2) Any investing company that files a written  
27 statement of intent (Form INT) with the department after May



1 21, 2009 and that meets the employment and wage requirements  
2 of this section by a date which is not later than one year  
3 after the date on which the qualifying project is placed in  
4 service, but fails to meet such requirements in any subsequent  
5 compliance year, shall forfeit a percentage of the capital  
6 credits claimed in the prior five years. The forfeiture shall  
7 equal 100 percent of the capital credits claimed in the year  
8 immediately preceding the year in which the investing company  
9 fails to maintain the employment and wage requirements of this  
10 section. The forfeiture percentage shall be reduced by 20  
11 percent for each successive prior year in the five year  
12 forfeiture period. The forfeiture of capital credits shall be  
13 treated in the same manner as the imposition of the tax  
14 imposed by this chapter and shall be payable by the investing  
15 company on the fifteenth day of the third month following the  
16 close of the year in which the investing company failed to  
17 meet the employment and wage requirements of this section."

18 Section 3. The provisions of this act are severable.  
19 If any part of this act is declared invalid or  
20 unconstitutional, that declaration shall not affect the part  
21 which remains.

22 Section 4. This act shall become effective  
23 immediately following its passage and approval by the  
24 Governor, or its otherwise becoming law.