

1 HB140
2 133693-5
3 By Representatives Hammon, Bridges, Moore (B), Lee, Shiver,
4 Chesteen, Weaver, Henry, Long, Gaston, Brown, Wood, Millican,
5 McMillan, Williams (D), Johnson (W), Collins, Nordgren,
6 Williams (J), Roberts, Wren, Wallace, Buttram, Fincher, Rich,
7 Patterson, Vance, Clouse, Sanderford, McCutcheon and Ball
8 RFD: Economic Development and Tourism
9 First Read: 07-FEB-12
10 PFD: 02/02/2012

1 ENGROSSED

2
3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Section 40-18-194, Code of Alabama 1975,
9 relating to an income tax capital credit for qualifying
10 projects of new businesses and business expansions; to allow
11 for an extension of the time period in which certain capital
12 credits may be claimed and will also allow the credit to be
13 carried forward from one (1) to four (4) years depending upon
14 the amount of the capital costs of the project.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Section 40-18-194, Code of Alabama 1975,
17 is amended to read as follows:

18 "§40-18-194.

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

1 (b) Each investing company, or its shareholders,
2 partners, members, owners, or beneficiaries shall be entitled
3 to the capital credit for each tax year of an investing
4 company with respect to which a capital credit is provided
5 pursuant to this article. The capital credit shall be allowed
6 as follows:

7 (1) The owner of an investing company which is a
8 proprietorship shall receive a credit against the individual
9 income tax levied by Section 40-18-5 that otherwise would be
10 owed to the state in any year by the owner with respect to the
11 income of the investing company generated by or arising out of
12 the qualifying project.

13 (2) An investing company which is an Alabama C
14 corporation as defined in Section 40-18-160, or which is an
15 Alabama S corporation and which is subject to taxation under
16 Section 40-18-174, or Section 40-18-175, shall receive a
17 credit against the corporate income tax levied by Section
18 40-18-31 or by Section 40-18-174 or Section 40-18-175, that
19 otherwise would be owed to the state in any year by the
20 investing company with respect to the income generated by or
21 arising out of the qualifying project.

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

1 the investing company with respect to income of the investing
2 company generated by or arising out of the qualifying project.

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

13 (5) An investing company which is a trust or estate
14 having income subject to taxation under Section 40-18-25(c)
15 shall receive a credit against the income tax levied by
16 Section 40-18-5 that otherwise would be owed to the state in
17 any year by the investing company on the income generated by
18 or arising out of the qualifying project.

19 (6) The beneficiaries of an investing company which
20 is a trust or estate the income of which is subject to
21 taxation under Section 40-18-25(d) each shall receive a credit
22 against the corporate income tax levied by Section 40-18-31,
23 or against the individual income tax levied by Section
24 40-18-5, whichever is applicable to each such beneficiary,
25 that otherwise would be owed to the state in any year by each
26 beneficiary of the investing company with respect to income of

1 the investing company generated by or arising out of the
2 qualifying project.

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

11 (8)a. An investing company which is a financial
12 institution as defined in Section 40-16-1 shall receive a
13 credit against the financial institution excise tax levied by
14 Section 40-16-4 that otherwise would be owed to the state in
15 any year by the investing company with respect to the income
16 generated by or arising out of the qualifying project which is
17 a data processing center, is a headquarters facility, or is
18 described in the 2007 North American Industry Classification
19 System National Industry 561422 (other than establishments
20 that originate telephone calls). To receive the capital credit
21 authorized by this paragraph (8)a., Section 40-18-193 shall be
22 complied with. Further, the financial institution must be the
23 investing company or it must own, directly or indirectly, at
24 least 50 percent of the investing company. If the financial
25 institution is a shareholder, partner, member, owner, or
26 beneficiary of an investing company which is not itself
27 subject to taxation, the financial institution shall be

1 entitled to a capital credit corresponding to its relative
2 ownership interest in the investing company, subject to the 50
3 percent ownership requirement of the immediately preceding
4 sentence.

5 b. In making the report required by Section
6 40-16-6(d), a financial institution receiving the capital
7 credit authorized in paragraph (8)a. shall not take into
8 account the qualifying project.

9 (9) The capital credit allowed under this subsection
10 for any tax year of an investing company shall not exceed the
11 aggregate amount which otherwise would be due from the
12 investing company, its shareholders, partners, members,
13 owners, or beneficiaries to the state in tax with respect to
14 the income of the investing company generated by or arising
15 out of the qualifying project, determined after the
16 application of all other deductions, losses, or credits
17 permitted under Titles 40 and 41, for the taxable year, and
18 determined by applying the maximum rate applicable to
19 individuals under Section 40-18-5, or the rate applicable to
20 corporations under Section 40-18-31, or the rate applicable to
21 financial institutions under Section 40-16-4, as the case may
22 be. Notwithstanding the foregoing, the capital credit allowed
23 under this subsection shall not exceed 60 percent of the
24 aggregate amount which would otherwise be due from the
25 investing company, in the case of a qualifying project for the
26 production of electricity from coal gasification or
27 liquefaction or advanced fossil-based generation, as such

1 terms are defined in Section 40-18-1, or hydropower
2 production, or 80 percent of the aggregate amount which would
3 otherwise be due, in the case of a qualifying project
4 described in Section 40-18-190(a)(13)e which produces
5 electricity from any other type of alternative energy
6 resource.

7 (10) a. In Except as provided in subsection b.
8 below, in no event may any amount described in this subsection
9 be carried forward or back by any investing company,
10 shareholders, partners, members, owners, or beneficiaries with
11 respect to a prior or subsequent year.

12 b. If the qualifying project has capital costs of at
13 least one hundred million dollars and provides not less than
14 one hundred jobs for new employees, the capital credit may be
15 carried forward for a maximum of four (4) taxable years,
16 depending on the amount of capital costs. Amounts described in
17 this subsection may only be carried forward by any investing
18 company, shareholders, partners, members, owners, or
19 beneficiaries as follows:

20 (1) If the capital costs are at least four hundred
21 million dollars, the capital credit may be carried forward for
22 a maximum of four (4) taxable years.

23 (2) If the capital costs are at least three hundred
24 million dollars but less than four hundred million dollars,
25 the capital credit may be carried forward for a maximum of
26 three (3) taxable years.

1 (3) If the capital costs are at least two hundred
2 million dollars but less than three hundred million dollars,
3 the capital credit may be carried forward for a maximum of two
4 (2) taxable years.

5 (4) If the capital costs are at least one hundred
6 million dollars but less than two hundred million dollars, the
7 capital credit may be carried forward for a maximum of one (1)
8 taxable year.

9 (5) If the capital costs are less than one hundred
10 million dollars, the capital credit may not be carried
11 forward.

12 c. Any provisions of the law to the contrary
13 notwithstanding any entity described in subsection b. may
14 delay the initial utilization of the capital credit for up to
15 three years after the qualifying project is placed in service,
16 after which time the twenty year period for the credit shall
17 begin.

18 (11) Any shareholder, partner, member, owner, or
19 beneficiary of an investing company may elect annually to use
20 his or her allowable portion of the tax credit created by this
21 article as a nonrefundable estimated tax payment against his
22 or her individual income tax liability. If a taxpayer makes an
23 annual election to use the aforementioned credit as a
24 nonrefundable estimated payment, the taxpayer shall compute
25 the amount of the credit as though it were a credit, subject
26 to all the requirements and limitations provided by law for
27 the credit, but shall use the amount computed as a

1 nonrefundable estimated payment and shall not use the same
2 amount as a credit. In no event shall this provision be
3 construed to allow the credit or nonrefundable estimated tax
4 payment to expand the 20-year limitation of the credit or
5 estimated tax payment. In no event shall a credit used as
6 nonrefundable estimated payment exceed the amount that would
7 be available if the credit were not used as a nonrefundable
8 estimate payment.

9 (c) The amendments made to this section by Act
10 2008-275 shall be effective for tax years and periods
11 beginning after December 31, 2011.

12 Section 2. ~~This act shall become effective for all~~
13 ~~qualifying projects placed in service after December 31, 2011,~~
14 ~~following its passage and approval by the Governor, or its~~
15 ~~otherwise becoming law. This act shall become effective for~~
16 all qualifying projects for which a project agreement has been
17 entered into prior to December 31, 2011, but which have not
18 been placed in service as of December 31, 2011, and for all
19 qualifying projects for which a project agreement is entered
20 into on or after December 31, 2011, following its passage and
21 approval by the Governor, or its otherwise becoming law.

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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..... 07-FEB-12

Read for the second time and placed
on the calendar 1 amendment 23-FEB-12

Read for the third time and passed
as amended..... 24-APR-12

Yeas 68, Nays 30, Abstains 1

Greg Pappas
Clerk