

1 HB58
2 164950-3
3 By Representative Baker
4 RFD: Economic Development and Tourism
5 First Read: 03-MAR-15
6 PFD: 02/27/2015

ENGROSSED

A BILL

TO BE ENTITLED

AN ACT

To enact the Alabama Jobs Act; to authorize and provide for a jobs credit incentive and an investment credit incentive to certain businesses for approved projects that create new jobs in Alabama; to provide that the incentives would only be available following the execution of a project agreement and a determination that the economic benefits of the project would exceed the cost of the incentives to the state; to allow the jobs credit for 10 years in an amount of 3 percent of the previous year's annual wages for eligible employees; to apply the jobs credit against the utility gross receipts and utility service use taxes; to provide that the jobs credit could be refundable during the incentive period; to provide that the jobs credit may be claimed as a credit against utility taxes paid with a carryforward for earned but unused amounts; to allow the investment credit in an amount of 1.5 percent of a qualified capital investment annually, for a period of 10 years; to apply the investment credit against the income tax, estimated income taxes, the financial institution excise tax, or the insurance premium tax, with additional offsets of utility gross receipts and utility service use

1 taxes; to provide that the investment credit may be claimed as
2 a credit against taxes paid with a carryforward for earned but
3 unused amounts; to permit special allocations of investment
4 credits; to make transferable the first three years of the
5 investment credit, in certain limited circumstances; to
6 provide for the distribution of the financial institution
7 excise, insurance premium, and utility taxes when a company
8 claims the jobs credit, the investment credit, or both; to
9 make the Jobs Act Incentives available only for projects that
10 fall within certain designated activities, that involve
11 certain minimum new job levels, and that meet certain other
12 standards; to require the Secretary of Commerce and Governor
13 to make certain findings before approving a company to receive
14 incentives; to require a project agreement; to allow the
15 Governor to decrease the amounts and durations of the Jobs Act
16 Incentives to ensure that the net economic benefits of the
17 qualifying project would be positive; to provide for proof
18 that incentives are due to be granted; to provide for the
19 promulgation of forms for information to be submitted to a
20 department of state government, and that such submissions
21 shall be treated as tax returns; to provide for audits of
22 companies claiming the Jobs Act Incentives; to require the
23 clawback of incentives in certain cases; to create a permanent
24 Joint Legislative Advisory Committee on Economic Incentives;
25 to provide for the powers of such committee; to provide for
26 the sunset of the act; to make legislative findings; to
27 provide for the promulgation of regulations; to provide that

1 the incentives shall not be considered securities; to provide
2 that this act shall not constitute a guarantee by the state of
3 company debt nor the lending of the credit of the state to any
4 company; to prohibit the adverse construction of the
5 provisions of the act; to provide that no company shall have
6 any right to incentives that are granted absent strict
7 compliance with this act; to provide that no cause of action
8 shall exist for the denial of any benefit under this act; to
9 create a new Article 16 of Chapter 18 of Title 40, Code of
10 Alabama 1975; to amend Sections 40-21-87 and 40-21-107, Code
11 of Alabama 1975; to repeal Articles 7, 7A and 9 of Chapter 18
12 of Title 40, Code of Alabama 1975, for new projects; to
13 provide for a transition from prior incentives; to allow for
14 certain legislative appropriations in the event a portion of
15 the act is held to be invalid; to provide for the severability
16 of invalid provisions; to provide for the repeal of
17 conflicting laws; to provide for an effective date.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This act shall be known and may be cited
20 as the "Alabama Jobs Act".

21 Section 2. The legislature makes the following
22 findings:

23 (a) The economic well-being of the citizens of the
24 state will be enhanced by the increased development and growth
25 of employment within Alabama.

26 (b) It is in the best interests of the state to
27 provide certain incentives to allow the state to foster

1 economic development through the recruitment of quality
2 projects and the expansion of existing businesses within
3 Alabama.

4 (c) The incentives provided for in this act do not
5 raise any taxes for any individuals or businesses in Alabama
6 under state law.

7 (d) The incentives provided in this act will allow
8 the state to encourage the creation of new jobs that may not
9 otherwise exist within the State of Alabama.

10 (e) The incentives provided in this act will
11 increase revenues for the state without increasing taxes.

12 (f) The Constitution of the State of Alabama grants
13 the legislature the authority to approve and authorize
14 exemptions, exclusions, deductions and credits from taxation
15 in order to define the net proceeds of any tax payable under
16 state law.

17 (g) The Constitution of the State of Alabama was
18 framed, and the laws of the state were enacted, with the goal
19 of protecting, encouraging, and developing individual
20 enterprise.

21 (h) The incentives provided in this act will not
22 decrease the salary paid to any teacher.

23 (i) The powers to be granted and the purposes to be
24 accomplished by this act will create an environment for the
25 recruitment of quality projects and the expansion of existing
26 businesses within Alabama.

(j) Economic development through tax and financial incentives benefits the citizens of the state and is a public purpose of the state.

Section 3. A new Article 16 of Chapter 18 of Title 40, Code of Alabama 1975, is created to read as follows:

§ 40-18-370. In addition to the definitions found at Section 40-18-1, the following words and phrases shall have the following meanings:

(1) APPROVED COMPANY. Any company determined by the Secretary of Commerce and the Governor to meet the criteria provided in Section 40-18-373.

(2) CAPITAL INVESTMENT. All costs and expenses incurred by the incentivized company in connection with the acquisition, construction, installation and equipping of a qualifying project, if such costs are required to be capitalized for purposes of the federal income tax, determined without regard to any rule that permits expenditures properly chargeable to a capital account to be treated as current expenditures. However, for any project involving the extraction of natural resources, the capital investment shall not include the costs of acquiring land, land recording fees, architectural and engineering services, environmental studies and environmental mitigation.

(3) COMPANY. Anyone or anything which has the powers to own a project and have employees.

(4) ELIGIBLE EMPLOYEES. Those employee positions set forth in a project agreement that will be the result of new jobs created by or through a qualifying project.

(5) EMPLOYEES. Some or all of those persons employed and residing in Alabama:

a. Who are being paid directly by an approved company, related company, common paymaster, joint venturer or leasing company for working at a qualifying project;

b. Whom the approved company, related company, common paymaster, joint venturer or leasing company identifies as its employees to the U.S. Internal Revenue Service, the Department of Revenue or the Department of Labor on returns or reports filed with the foregoing, including, but not limited to, IRS Form 941; and

c. Who are assigned to a qualifying project for a period of at least one year.

(6) INCENTIVE PERIOD. The period or periods of time during which an incentivized company can receive one or more of the Jobs Act Incentives.

(7) INCENTIVIZED COMPANY. An approved company and any related company that are allowed to claim either or both of the Jobs Act Incentives as provided for in the project agreement.

(8) INVESTMENT CREDIT. The annual incentive provided in Section 40-18-376.

(9) JOBS ACT INCENTIVES. The jobs credit and the investment credit as authorized and provided for in this act.

(10) JOBS CREDIT. The annual incentive provided in Section 40-18-375.

(11) NAICS CODE. Any sector, subsector, industry group, industry or national industry of the 2012 North American Industry Classification System, or any similar classification system developed in conjunction with the United States Department of Commerce or Office of Management and Budget.

(12) PROJECT. Any land, building or other improvements, and all real and personal properties, whether or not contiguous and whether or not previously in existence, if in Alabama and if deemed necessary or useful in connection with an activity listed in Section 40-18-372(a).

(13) PROJECT AGREEMENT. The agreement entered into between an approved company and the Governor establishing the terms and conditions for the provision of the Jobs Act Incentives, as provided for in Section 40-18-374.

(14) QUALIFYING PROJECT. Any project to be undertaken by an approved company that satisfies Section 40-18-372.

(15) RELATED COMPANY. Any company that is under common ownership, management or control with a company or an approved company, as the case may be.

(16) UTILITY TAXES. The taxes imposed by Sections 40-21-82 and 40-21-102.

(17) WAGES. Total wages of an employee (including gross wages, salaries, overtime and bonuses), defined by

1 reference to Section 25-4-16(b), without application of
2 Sections 25-4-16(b) (1), 25-4-16(b) (2)a., 25-4-16(b) (3) and
3 25-4-16(b) (4).

4 § 40-18-371. For a company to receive one or both of
5 the Jobs Act Incentives provided in this article, all of the
6 following shall occur:

7 (a) There must be a qualifying project predominantly
8 conducting an activity specified in Section 40-18-372(a);

9 (b) The qualifying project shall create at least the
10 number of new jobs specified in Section 40-18-372(b);

11 (c) The company proposing the qualifying project
12 must be an approved company, as provided in Section 40-18-373;

13 (d) The approved company and the Governor must enter
14 into a project agreement, as provided in Section 40-18-374;

15 (e) If the incentivized company is allowed a jobs
16 credit, the proof of wages actually paid shall have been
17 delivered and certified, as provided in Section 40-18-375; and

18 (f) If the incentivized company is allowed an
19 investment credit, the proof of capital actually invested
20 shall have been delivered and certified, as provided in
21 Section 40-18-376.

22 § 40-18-372. A qualifying project must be found by
23 the Secretary of Commerce to conduct an activity specified in
24 subsection (a) and to meet the minimum standard set forth in
25 subsection (b).

26 (a) A qualifying project must predominantly conduct
27 an activity that is any one or more of the following:

(1) Described by NAICS Code 1133, 115111, 2121, 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482, 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493, 511, 5121 (other than 51213), 51221, 517, 518 (without regard to the premise that data processing and related services be performed in conjunction with a third party), 51913, 52232, 54133 (if predominantly in furtherance of another activity described in this article), 54134 (if predominantly in furtherance of another activity described in this article), 54138, 5415, 541614, 5417, 55 (if not for the production of electricity), 561422 (other than establishments that originate telephone calls), 562213, 56291, 56292, 611512, 927 or 92811.

(2) The production of biofuel as such term is defined in Section 2-2-90(c)(2).

(3) The conduct of original investigations undertaken on a systematic basis to gain new knowledge or the application of research findings or other scientific knowledge to create new or significantly improved products or processes.

(4) The national or regional headquarters for a company that conducts significant business operations outside the state and that will serve as the principal office of the company's principal operating officer with chief responsibility for the daily business operations of the company.

(5) A commercial enterprise which is open to the public not less than 120 days during a calendar year and is designed to attract visitors from inside or outside of the

State of Alabama, typically for its inherent cultural value, historical significance, natural or man-made beauty, or entertainment or amusement opportunities, including, but not limited to, a cultural or historical site, a botanical garden, a museum, a wildlife park or aquarium open to the public that cares for and displays a collection of animals or fish, an amusement park, a convention hotel and conference center, a water park, or a spectator venue or arena.

(5) (6) A target of the state's economic development efforts pursuant to the Accelerate Alabama Strategic Economic Development Plan adopted in January 2012 by the Alabama Economic Development Alliance, created by Executive Order Number 21 of the Governor on July 18, 2011, or any amended version or successor document thereto.

(6) (7) A type listed in a regulation adopted by the Department of Commerce, other than a regulation submitted as an emergency rule.

Notwithstanding the foregoing, a qualifying project may not engage predominantly in farming activities involving trees, animals or crops, and a qualifying project may not engage predominantly in the retail sale of tangible personal property or ~~services~~. services, and may not be a shopping center, restaurant, movie theater, bowling alley, fitness center, miniature golf course, nightclub, gaming facility, or establishment serving the local community. However, if such ~~retail sales~~ excluded activities are not the predominant activity at the project, and if the project is otherwise a

1 qualifying project, then the project agreement may provide
2 that the capital investment may include costs related to
3 ~~retail sales excluded activities~~ that are ancillary to the
4 primary business conducted as part of the project. This
5 provision shall not be deemed to exclude customer service
6 centers, call centers or headquarters otherwise allowed by
7 this subsection (a).

8 (b) A qualifying project shall create a significant
9 number of new jobs for the area in which the qualifying
10 project shall be located. Absent a finding of extraordinary
11 circumstances by the Secretary of Commerce, a qualifying
12 project shall employ either of the following number of new
13 employees:

14 (1) Any number of new employees, for a qualifying
15 project in which the predominant activity involves chemical
16 manufacturing, data centers, engineering, design, or research;
17 or

18 (2) At least 50 new employees, for all other
19 qualifying projects.

20 § 40-18-373. In order for a company to be an
21 approved company, all of the following shall occur:

22 (a) For any company that proposes a qualifying
23 project, the Secretary of Commerce shall make all of the
24 following findings:

25 (1) That the project is in fact a qualifying
26 project;

(2) That the qualifying project will not decrease, directly or indirectly, Alabama's exports; and

(3) That the amount of tax incentives sought are exceeded by anticipated revenues for the state, including income, property, business privilege, utility, gross receipts, sales, and use tax revenues that are generated by the economic activity resulting from the project, as they arise from the following aspects of the qualifying project:

a. Construction activities related to the qualifying project;

b. The purchase of building materials and the initial equipping of the qualifying project;

c. The subsequent equipping of the qualifying project; and

d. The operation of the qualifying project.

(b) Upon making affirmative findings on the criteria set forth in subsection (a) that are applicable, the Secretary of Commerce shall recommend to the Governor that the company be designated as an approved company. The name of the company and information collected about it shall be forwarded to the Governor.

(c) After reviewing the information provided by the Secretary of Commerce, the Governor shall also determine whether the company meets the criteria set forth in subsection (a). If the Governor makes such a finding, the company shall be an approved company.

(a) An incentivized company may claim either or both of the Jobs Act Incentives, to the extent provided in the project agreement.

(b) In order for an incentivized company to claim the Jobs Act Incentives, the Governor and the incentivized company shall execute a project agreement. The agreement shall contain all of the following:

(1) The name of the incentivized company;

(2) The location of the qualifying project;

(3) The activity to be conducted at the qualifying

project;

(4) The Jobs Act Incentives to be granted and the order in which they shall be claimed;

(5) The capital investment to be made at the

qualifying project;

(6) The time period for the capital investment to be made at the qualifying project;

(7) The number of eligible employees at the qualifying project;

(8) The anticipated wages to be paid to or for the benefit of eligible employees during the incentive period for the jobs created;

(9) The dates or conditions that shall begin the running of the incentive periods for applicable Jobs Act Incentives;

(10) The lengths of the incentive periods for the
Jobs Act Incentives;

(11) Any annual or aggregate limitations on the amount of either or both of the Jobs Act Incentives that can be claimed during an incentive period;

(12) Provisions governing the recapture of all or part of the Jobs Act Incentives awarded to the qualifying project, should the approved company default on its obligations in the project agreement;

(13) Whether the project agreement may be assigned by the approved company to some other purchaser, assignee or successor;

(14) Any other terms, conditions and limitations that this act or the Governor may require for an incentivized company to qualify for and receive a Jobs Act Incentive; and

(15) Any other terms the parties deem necessary or desirable.

(c) The Governor may decrease the amounts and durations of the Jobs Act Incentives to ensure that the anticipated revenues for the state will exceed the amount of tax incentives sought.

§ 40-18-375.

(a) If provided for in the project agreement and in accordance with the terms therein, the incentivized company is allowed a jobs credit against utility taxes, in an annual amount equal to 3 percent of the wages paid to eligible employees during the prior year. The incentive period shall be 10 years.

(b) The project agreement shall provide that one of the following methods shall be used to realize the benefits of the jobs credit:

(1)a. The jobs credit may be paid to the incentivized company as a refund out of utility taxes during the incentive period, regardless of the amount of utility taxes actually paid by the incentivized company.

b. For each year of the incentive period for the jobs credit, the incentivized company shall submit to the Department of Commerce a certification as to the wages paid to eligible employees during the prior year. Following such examination as it deems necessary, the Department of Commerce may certify the information and deliver the same to the Department of Revenue. Thereafter, the Department of Revenue shall calculate the correct refund and issue it directly to the incentivized company.

(2)a. The jobs credit may be claimed as a credit against utility taxes actually paid. In any one year, if the credit exceeds the amount of taxes that are allowed to be offset by the project agreement and that are owed by the incentivized company, the incentivized company may carry the credit forward, to the extent allowed in the project agreement. No carryforward shall be allowed for more than five years. Rules similar to those used for Section 40-18-15.2 shall be applied.

b. Prior to claiming the jobs credit as provided in this paragraph (2), the incentivized company shall submit to

1 the Department of Commerce a certification as to the wages
2 paid to eligible employees during the prior year. Following
3 such examination as it deems necessary, the Department of
4 Commerce may certify the information and deliver same to the
5 Department of Revenue. Thereafter, the Department of Revenue
6 allow the jobs credit.

7 (c) The realization methods in subsection (b) shall
8 not create debts of the state within the meaning of Section
9 213 of the Constitution of the state, as amended.

10 (d) The Department of Finance shall promulgate
11 regulations to ensure that the credit in no case would reduce
12 the distribution for the Alabama Special Mental Health Trust
13 Fund.

14 § 40-18-376.

15 (a) If provided for in the project agreement, the
16 incentivized company is allowed an investment credit in an
17 annual amount equal to 1.5 percent of the capital investment
18 incurred as of the beginning of the incentive period, to be
19 used as follows:

20 (1) To offset the income taxes found in this
21 chapter, or as an estimated tax payment of income taxes;

22 (2) To offset the financial institution excise tax
23 found in Chapter 16;

24 (3) To offset the insurance premium tax levied by
25 Section 27-4A-3(a), or as an estimated payment of insurance
26 premium tax;

27 (4) To offset utility taxes; or

(5) To offset some combination of the foregoing, so long as the same credit is used only once.

The incentive period shall begin no earlier than the placed-in-service date. The incentive period shall be 10 years. Should only some portion of a tax year be included in the incentive period, the amount of the investment credit shall be prorated on a daily basis.

(b) A project agreement may specify any one of more of the following methods by which the investment credit shall be realized by the incentivized company, so long as a credit is not utilized more than once:

(1)a. The investment credit may be claimed as a credit against the taxes in subsection (a) that are actually paid. In any one year, if the credit exceeds the amount of taxes that are allowed to be offset by the project agreement and that are owed by the incentivized company, the incentivized company may carry the credit forward, to the extent allowed in the project agreement. No carryforward shall be allowed for more than five years. Rules similar to those used for Section 40-18-15.2 shall be applied.

b. Prior to claiming the investment credit as provided in this paragraph (1), the incentivized company shall submit to the Department of Commerce a certification as to its capital investment as of the dates specified in the project agreement. Following such examination as it deems necessary, the Department of Commerce may certify the information and

1 deliver the same to the Department of Revenue. Thereafter, the
2 Department of Revenue shall allow the investment credit.

3 (2) The project agreement may authorize an
4 incentivized company that is taxed as a flow-through entity to
5 allocate the credit among some or all of the owners in any
6 manner specified, regardless of whether the allocation follows
7 rules similar to 26 U.S.C. § 704(b) and the regulations
8 thereunder. The owners may then use their allocated share of
9 the investment credit to offset any of the taxes listed in
10 subsection (a), as provided in paragraph (1). This paragraph
11 (2) shall be liberally construed to apply to multiple levels
12 of companies, to allow the investment credits to be used by
13 those persons bearing the tax burdens of the qualifying
14 project, and such companies shall include but shall in no way
15 be limited to flow-through entities, employee stock ownership
16 plans, mutual funds, real estate investment trusts, and it
17 shall also apply to offset the income tax liability of
18 employee/owners of a flow-through entity owned by an employee
19 stock ownership plan trust.

20 (3) All or part of the first three years of the
21 investment credit may be transferred by the incentivized
22 company and applied by another person or company as follows:

23 a. A transfer of the credit shall be made by
24 written, notarized contract.

25 b. No such transfer shall occur before the contract
26 is approved by the Secretary of Commerce. In determining

whether to approve any transfer, the Secretary shall make all of the following findings:

(i) That any year's investment credit will not be purchased by more than three transferees, unless such limitation is found by the Secretary of Commerce unnecessarily to limit the class of potential transferees;

(ii) That the proposed transfer will enhance the economic benefits of the qualifying project;

(iii) That the transfer is at a value of at least 85 percent of the present value of the credits; and

(iv) That the incentivized company and the transferee are both subject to the tax listed in paragraph (a) (1), are both subject to the tax listed in paragraph (a) (2), or are both subject to the tax listed in paragraph (a) (3).

Upon making affirmative findings on the criteria set forth above, the Secretary of Commerce shall recommend to the Governor that the transfer should be approved. Information about the proposed transfer shall be forwarded to the Governor, and the Governor may include provisions about the transfer in the project agreement, or in an amendment thereto executed by the Governor and the incentivized company.

c. If a transfer is approved, the incentivized company shall submit to the Department of Commerce the following:

(i) Certifications as to its capital investment as of the dates specified in the project agreement. Following

1 such examination as it deems necessary, the Department of
2 Commerce may certify the information and deliver the same to
3 the Department of Revenue.

4 (ii) Certified information about the transfers,
5 including identifying information about the transferees and
6 the amount of credit each transferee should claim. Following
7 such examination as it deems necessary, the Department of
8 Commerce may certify the information and deliver the same to
9 the Department of Revenue.

10 d. Upon receipt of the certifications from the
11 Department of Commerce as required by subparagraph (b) (3)c.,
12 the Department of Revenue shall thereafter allow the
13 appropriate amount of the investment credit to offset the tax
14 liability of the transferee for any of the taxes listed in
15 subsection (a). A transferee may not make a subsequent
16 transfer of the credit.

17 e. If a credit is transferred, an incentivized
18 company that is later determined by the Secretary of Commerce
19 to have defaulted under the project agreement shall be liable
20 for the underpayment of tax attributable to the credit and for
21 penalties and interest thereon. Unless the purchase of the
22 credits is determined to have been made in a fraudulent
23 manner, or is a transfer in anticipation of bankruptcy,
24 insolvency or closure, a transferee shall not be liable for
25 the unpaid tax attributable to the credit, or for penalties or
26 interest thereon.

(c) The realization methods in subsection (b) shall not create debts of the state within the meaning of Section 213 of the Constitution of the state, as amended.

(d) (1) To the extent the investment credit is used to offset a financial institution excise tax liability, in making the report required by Section 40-16-6(d), the financial institution receiving the investment credit shall not take into account the qualifying project, and the Department of Finance shall promulgate regulations to ensure that the credit in no case would reduce the distribution for municipalities and counties.

(2) To the extent the investment credit is used to offset an insurance premium tax liability, the Department of Finance shall promulgate regulations to ensure that the credit would reduce the distribution for the Education Trust Fund, but in no case would the investment credit reduce the distributions for the State General Fund or the Alabama Special Mental Health Trust Fund.

(3) To the extent the investment credit is used to offset liability for the tax imposed by Section 40-21-82, the Department of Finance shall promulgate regulations to ensure that the credit in no case would reduce the distribution for the Alabama Special Mental Health Trust Fund.

§ 40-18-377.

(a) After its execution, the Department of Commerce shall forward to the Department of Revenue a copy of any

1 project agreement that allows an incentivized company to claim
2 a Jobs Act Incentive.

3 (b) Jobs Act Incentives shall not be considered
4 securities under Section 8-6-2(10).

5 § 40-18-378.

6 (a) The Department of Labor shall periodically
7 verify the actual number of eligible employees employed at the
8 qualifying project and the wages of the eligible employees
9 during the relevant year. If the Department of Labor is not
10 able to provide the verification utilizing all available
11 resources, it may request any additional information from the
12 incentivized company as may be necessary. The Department of
13 Revenue may periodically audit any incentivized company to
14 monitor compliance by the incentivized company with this
15 article. Nothing in this article shall be construed to limit
16 the powers otherwise existing for the Department of Revenue to
17 audit and assess an incentivized company. The Department of
18 Insurance shall have similar audit rights over any
19 incentivized company that is subject to the insurance premium
20 tax.

21 (b) The project agreement shall include provisions
22 for the incentivized company to return any unearned credit
23 amounts.

24 (c) (1) An incentivized company shall be liable for
25 any unearned portion of the jobs credit or investment credit
26 it claims or transfers pursuant to this article. The jobs
27 credit will be considered unearned when the incentivized

1 company fails to pay the full amount of wages or create the
2 full number of jobs upon which the credit was based and
3 claimed. The investment credit will be considered unearned
4 when the incentivized company fails to make the full capital
5 investment upon which the credit was based and claimed or upon
6 which the credit was valued and then transferred. The
7 incentivized company shall be liable for only that portion of
8 the jobs credit or investment credit that was unearned. Any
9 credit claimed by an owner of an incentivized company is
10 deemed to have been claimed by the incentivized company for
11 purposes of this subsection.

12 (2) The Secretary of Commerce may report to the
13 Department of Revenue any failure of an incentivized company
14 to meet the jobs, wage or investment requirements specified in
15 the project agreement. The report will be made by March 31 of
16 the year following the calendar year in which the failure
17 occurs and shall contain sufficient information for the
18 Department of Revenue to calculate the unearned portion of the
19 jobs credit or investment credit. The underpayment of the
20 applicable tax will be deemed to have occurred upon the filing
21 of the report. The report shall be treated as the filing of a
22 return by the incentivized company for purposes of any
23 applicable period of limitation.

24 (3) The Department of Revenue may assess an
25 incentivized company for any unearned portion of the
26 investment credit or jobs credit, with allowed interest and
27 penalties, pursuant to the terms of Chapter 2A or 29. The

liability shall be considered an underpayment of the tax against which the respective credit was applied or refunded.

(4) If more than one company is considered the incentivized company under the terms of the project agreement, each such company will be jointly and severally liable for any liability associated with the unearned credit.

§ 40-18-379.

(a) There is hereby created a permanent Joint Legislative Advisory Committee on Economic Incentives, hereinafter referred to as the committee.

(b) The committee shall be comprised of all of the following persons:

(1) The chairs of the House Ways and Means General Fund and Education Fund committees;

(2) The chairs of the Senate Finance and Taxation General Fund and Education Fund committees;

(3) The Speaker of the House, or his or her designee, and one member of the House of Representatives to be appointed by the Speaker of the House; and

(4) The President Pro Tempore of the Senate, or his or her designee, and one member of the Senate to be appointed by the President Pro Tempore of the Senate.

(c) The ~~commission~~ committee shall hold an organizational meeting within 30 days after the enactment of this act and shall therein elect a chair and vice chair from among its members. Thereafter, the ~~commission~~ committee shall meet at the call of the chair or any majority of members

1 thereof; provided that the committee shall meet at least two
2 times annually. Other than the organizational meeting, such
3 meetings shall be held with the Secretary of Commerce in
4 attendance, or his or her designee. The committee may meet,
5 act and conduct its business during the sessions of the
6 Legislature or any recess thereof, and in the interim period
7 between sessions.

8 (d) The committee shall adopt its own rules of
9 procedure for the transaction of committee business, and a
10 majority of the members present shall constitute a quorum for
11 the purpose of transacting or performing authorized duties.

12 (e) The committee shall monitor and evaluate the
13 management process and standards used by the Department of
14 Commerce in the development of project agreements and in the
15 awarding of economic development incentives as authorized by
16 the laws of this state. The committee may provide
17 recommendations to the Secretary of Commerce regarding the
18 same and shall act in an advisory role only. Such
19 recommendations may include certain identified minimum
20 standards to be set forth in project agreements and otherwise
21 in the awarding of economic development incentives, as well as
22 recommendations regarding the recruitment of certain
23 industries to the various geographic regions of the state. The
24 committee may also request from the Department of Commerce
25 specific, non-confidential information on successfully
26 negotiated and executed project agreements as well as

1 non-confidential information on unsuccessful project agreement
2 negotiations.

3 (f) The Department of Commerce shall provide to the
4 committee, upon request, an aggregated list of the amounts and
5 types of economic development incentives awarded, as well as
6 an analysis of the cost and benefits of the incentives
7 awarded. The Department of Revenue shall assist the Department
8 of Commerce in the calculations required in this section.

9 (g) The committee shall make an annual report of its
10 findings and recommendations to the Legislature during each
11 regular session, and in its discretion may submit additional
12 reports from time to time, or at any time.

13 (h) In no event shall the Department of Commerce be
14 required to disclose matters which would cause it to violate
15 any nondisclosure agreement executed for a project. In no
16 event shall the Department of Commerce be required to disclose
17 matters which would cause the state of Alabama to be at a
18 competitive disadvantage in ongoing or future project
19 negotiations. The Department of Commerce shall not be required
20 under this act to disclose confidential information to the
21 committee that involves ongoing project negotiations.

22 (i) Meetings of the committee are exempt from
23 Chapter 25A of Title 36, provided that the minutes of each
24 meeting shall be made available for public inspection. In
25 order to balance the privacy needs of economic development
26 negotiations with openness to the public, the committee may

1 use code names in its deliberations about various applicants
2 and in the minutes of its proceedings.

3 (j) The membership of the committee shall be
4 inclusive and shall reflect the racial, gender, geographic,
5 urban/rural, and economic diversity of the state.

6 § 40-18-380.

7 (a) The Departments of Commerce, Labor, Insurance,
8 Revenue and Finance shall implement this article, exercise all
9 powers as authorized in this article, and promulgate
10 regulations to implement and administer the provisions of this
11 act.

12 b) All filings made by a private party with any
13 department of the state government shall be made using forms
14 promulgated by such department. Any such filing shall be
15 treated as a tax return, subject to penalties imposed by the
16 Department of Revenue.

17 § 40-18-381.

18 (a) Nothing in this article shall be construed to
19 constitute a guarantee or assumption by the state of any debt
20 of any company nor to authorize the credit of the state to be
21 given, pledged or loaned to any company.

22 (b) The provisions of this article shall not be
23 construed in a manner adverse to the validity of any Jobs Act
24 Incentives.

25 (c) Nothing in this article shall be construed to
26 make available to any company any right to the Jobs Act
27 Incentives absent strict compliance with this article. No

cause of action shall exist for the denial of any benefit under this article.

Section 4. Sections 40-21-87 and 40-21-107, Code of Alabama 1975, are amended to read as follows:

"§40-21-87.

All taxes or other funds received or collected by the Department of Revenue of the State of Alabama under the provisions of this article remaining after the application of any exemptions, exclusions, deductions, or credits applicable thereto, and after the payment of the expenses of administration and enforcement of this article shall be without delay deposited into the State Treasury to the credit of Education Trust Fund except that, beginning the fiscal year ending September 30, 1993, \$14,600,000 annually shall be deposited to the Special Mental Health Trust Fund, of which one-fourth is to be deposited quarterly.

"§40-21-107.

All taxes or other funds received or collected by the Department of Revenue of the State of Alabama under the provisions of this article remaining after the application of any exemptions, exclusions, deductions, or credits applicable thereto, and after the payment of the expenses of administration and enforcement of this article shall be without delay deposited into the State Treasury to the credit of Alabama Education Trust Fund.

Section 5. The incentives authorized by this act shall not be available for qualifying projects for which

project agreements have not been executed on or prior to December 31, 2019, unless the Legislature, by joint resolution or other applicable action of both houses, votes to continue or reinstate the incentives for new projects after that date. No action or inaction on the part of the Legislature shall reduce or suspend any incentive awarded pursuant to this act in any past or future calendar year with respect to qualifying projects for which project agreements have been executed on or prior to December 31, 2019, it being the sole intention of this section that failure of the Legislature to adopt a joint resolution or other applicable action of both houses continuing the incentives authorized by this act for periods after December 31, 2019, shall affect only the availability of the incentives to qualifying projects for which project agreements have not been executed on or prior to December 31, 2019, and shall not affect qualifying projects for which project agreements have been executed on or prior to December 31, 2019.

Section 6. Articles 7, 7A and 9 of Chapter 18 of Title 40, Code of Alabama 1975, are repealed; provided, however, that those provisions shall remain in full force and effect for any qualifying project which, within six months of the effective date of this act, has evidenced its intent to claim such incentives by the filing of a Form INT-1, the execution of a project agreement pursuant to this act, or the execution of a memorandum of understanding with the Department of Commerce. In no case shall a project receive both the Jobs

Act Incentives and the incentives under Articles 7, 7A or 9 of Chapter 18 of Title 40, Code of Alabama 1975. The Jobs Act Incentives shall not be available to any project for which substantial construction activities have begun by the effective date of this act.

Section 7. If a court of competent jurisdiction adjudges invalid or unconstitutional any clause, sentence, paragraph, section or part of this act, the judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect of the decision shall be confined to the clause, sentence, paragraph, section or part of this act adjudged to be invalid or unconstitutional. No action or inaction on the part of a court shall reduce or suspend any Jobs Act Incentive in any past or future calendar year with respect to any incentivized company with an executed project agreement, the effect being that a finding of invalidity or unconstitutionality shall affect only the availability of the Jobs Act Incentives to projects for which a project agreement is not yet in effect. In the event any part of this act is adjudged to be invalid or unconstitutional and, notwithstanding the preceding sentence, that adjudication has the effect of reducing or suspending any Jobs Act Incentive, the Legislature shall make applicable appropriations from available funds.

Section 8. All laws or parts of laws which conflict with this act are repealed.

1 Section 9. This act shall become effective ninety
2 days following its passage and approval by the Governor, or
3 its otherwise becoming law.

1
2
3

House of Representatives

4 Read for the first time and re-
5 ferred to the House of Representa-
6 tives committee on Economic Devel-
7 opment and Tourism..... 03-MAR-15
8
9 Read for the second time and placed
10 on the calendar 2 amendments 05-MAR-15
11
12 Read for the third time and passed
13 as amended..... 10-MAR-15
14 Yeas 101, Nays 0, Abstains 1

15
16 Jeff Woodard
17 Clerk
18