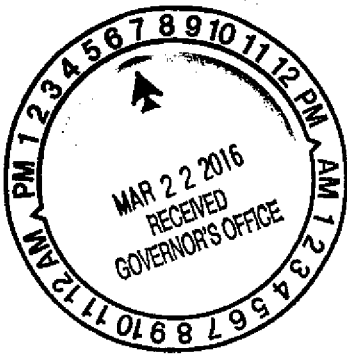


ACT #2016-102

1 HB34
2 174393-7
3 By Representative McCutcheon
4 RFD: Ways and Means Education
5 First Read: 02-FEB-16
6 PFD: 01/29/2016



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ENROLLED, An Act,

To create the Alabama Renewal Act; to add Articles 18 and 19 to Chapter 18, Title 40, of the Code of Alabama 1975, commencing with Sections 40-18-400 and 40-18-410, respectively; to create new programs for the growth of business and industry in Alabama; to create tax credits for increased use of the state's port facilities; to create the Growing Alabama Act tax credit to address economic development needs in Alabama; to cap the credits; to provide for the carryforward of certain earned but unused credits; to provide methods for claiming certain credits; to provide for proof that credits are due to be granted; to provide for the promulgation of forms; and to provide rulemaking authority.
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Alabama Renewal Act.

Section 2. A new Article 18 of Chapter 18 of Title 40 is added to the Code of Alabama 1975, to read as follows:

Article 18.

§40-18-400.

For the purposes of this article, the following words and phrases shall have the following meanings:

- (1) BASE CARGO VOLUME. The greater of the following:

1 a. One hundred five percent of the cargo volume of a
2 port facility user in the ~~immediate prior year~~ 12-month period
3 immediately preceding the application.

4 b. Ten TEUs, for cargo measured by TEU, or 75 net
5 tons, for cargo measured by net ton.

6 (2) CARGO VOLUME. The total amount of
7 noncontainerized general cargo or containers, measured in
8 TEUs, in net tons, or in kilograms, transported by way of a
9 waterborne ship, air cargo aircraft, or railroad through a
10 port facility; provided that such cargo shall be owned by the
11 port facility user at the time the port facility is used.

12 (3) COMMISSION. The Renewal of Alabama Commission
13 created by Section 40-18-402.

14 (4) COMPANY. Anyone or anything which has the powers
15 to conduct the activities required to claim the port credit.

16 (5) INLAND PORTS. Physical sites located away from
17 traditional land, air, and coastal borders with the vision to
18 facilitate and process international and domestic trade
19 through strategic investment in multi-modal transportation
20 assets and by promoting value-added services as goods move
21 through the supply chain.

22 ~~(5)~~ (6) PORT FACILITY. Any publicly owned facility
23 located within this state's ports of entry, including inland
24 ports, through which cargo is transported by way of a
25 waterborne ship, air cargo aircraft, or railroad, to or from

1 destinations inside or outside this state and which handles
 2 cargo owned by third parties in addition to cargo owned by the
 3 port facility's owner.

4 ~~(6)~~ (7) PORT CREDIT. The credit provided for in
 5 Section 40-18-403.

6 ~~(7)~~ (8) PORT FACILITY USER. A company engaged in
 7 manufacturing, warehousing, or distribution which uses a port
 8 facility.

9 ~~(8)~~ (9) TEU. A "20-foot equivalent unit" volumetric
 10 measure based on the size of a container 20 feet long by eight
 11 feet wide by eight feet, six inches high.

12 §40-18-401.

13 (a) The port credit provided for in Section
 14 40-18-403 is created by this article and is allowed upon
 15 strict compliance with the provisions herein.

16 (b) Prior to the allowance of the port credit, an
 17 application shall be filed with the commission, on a form
 18 promulgated by the commission.

19 (1) The application shall be filed by the port
 20 facility user desiring to claim the credit.

21 (2) The commission shall establish deadlines for
 22 applications. Such applications shall solicit whatever
 23 information the commission deems important to its
 24 determination of whether granting a port credit will create
 25 new, high paying jobs in the state, bring substantial capital

1 to the state, increase the usage of a port facility, promote
2 the development of clusters of businesses in the state, or
3 promote the economic development efforts of the state.

4 (3) Upon review of the applications, the commission
5 may approve such applications as shall result in port credits
6 being awarded so as not to exceed twelve million dollars
7 (\$12,000,000) for the life of the program, and shall not
8 exceed five million dollars (\$5,000,000) in a fiscal year.

9 (4) The commission shall charge application fees to
10 offset the costs of administration of this article.

11 (c) Prior to claiming a port credit, the company
12 shall submit to the Department of Commerce a certification
13 containing information adequate to prove that the company is
14 entitled to the credit. Following such examination as it deems
15 necessary, the Department of Commerce may certify the
16 information and deliver the same to the Department of Revenue.
17 Thereafter, the Department of Revenue shall allow the tax
18 credit.

19 (d) (1) Nothing in this article shall be construed to
20 constitute a guarantee or assumption by the state of any debt
21 of any company nor to authorize the credit of the state to be
22 given, pledged, or loaned to any company.

23 (2) Nothing in this article shall be construed to
24 make available to any company any right to the benefits

1 conferred by this article absent strict compliance with this
2 article.

3 (3) Nothing in this article shall be construed to
4 change or lessen the requirements for claiming jobs act
5 incentives under the Alabama Jobs Act, Section 40-18-370, et
6 seq. Companies claiming the jobs act incentives must strictly
7 comply with the Alabama Jobs Act.

8 (4) All filings made by a private party with the
9 commission or any department of state government shall be made
10 using forms adopted by the commission or department. Any such
11 filing shall be treated as a tax return, subject to penalties
12 imposed by the Department of Revenue.

13 (5) Nothing in this article shall be construed to
14 limit the powers otherwise existing for the Department of
15 Revenue to audit and assess any company claiming a port
16 credit.

17 §40-18-402.

18 (a) There is hereby created the Renewal of Alabama
19 Commission.

20 (b) The commission shall be comprised of all of the
21 following persons:

22 (1) The Finance Director, or his or her designee;

23 (2) The Secretary of Commerce, or his or her
24 designee;

1 (3) The Chair of the House Ways and Means Education
2 Committee, or its successor committee, if any, or his or her
3 designee;

4 (4) The Chair of the Senate Finance and Taxation
5 Education Committee, or its successor committee, if any, or
6 his or her designee;

7 (5) Three persons appointed by the Governor, at
8 least one of whom shall be a resident of an area of the state
9 the source of whose primary power supply is the Tennessee
10 Valley Authority or its lawfully authorized distributor;

11 (6) One person appointed by the Speaker of the
12 House, who shall be an employee, board member, or trustee of
13 an Alabama public community college or four-year institution
14 of higher education; and

15 (7) One person appointed by the President Pro
16 Tempore of the Senate, who shall be an employee or a board
17 member of an Alabama public school system providing K-12
18 education.

19 (c) All persons appointed to the commission shall
20 have one or more of the following qualifications:

21 (1) Members must be knowledgeable in the management
22 of money and finance;

23 (2) Members must have experience in international
24 trade; or

1 (3) Members must have experience as chief executive
2 officers, chief financial officers, or other executive level
3 management roles in businesses in this state which employ
4 Alabama residents.

5 ~~(4) The commission shall be inclusive and reflect~~
6 ~~the gender, racial, geographic, urban and rural, and economic~~
7 ~~diversity of the state.~~

8 (4) All appointing authorities shall coordinate
9 their appointments so that diversity of gender, race, and
10 geographical areas are reflective of the makeup of the state.

11 (d) No person appointed to the commission shall
12 serve a term longer than four years. Persons may serve
13 consecutive subsequent four-year terms.

14 (e) The Secretary of Commerce, or his or her
15 designee, shall be the chair of the commission and shall
16 preside over all meetings of the commission. The commission
17 may elect such other officers as it may find necessary or
18 desirable; provided that the commission shall have a board
19 secretary to keep minutes of its proceedings. No officer of
20 the commission other than the chair need be a member of the
21 commission.

22 (f) No member of the commission shall vote or
23 participate in any matter in which the member or a family
24 member of the member has any financial gain or interest.

1 (g) Members of the commission shall serve without
2 compensation.

3 (h) The commission shall meet at the call of the
4 chair or any majority of members thereof; provided that the
5 commission shall meet at least two times annually.

6 (i) The commission shall adopt its own rules of
7 procedure for the transaction of its business, and a majority
8 of the members present shall constitute a quorum for the
9 purpose of transacting or performing authorized duties.

10 Meetings of the commission are subject to Chapter 25A of Title
11 36. In order to balance the privacy needs of companies with
12 openness to the public, the commission may use code names in
13 its deliberations about various applicants and in the minutes
14 of its proceedings.

15 (j) The Department of Commerce shall provide
16 administrative and staffing support for the commission. The
17 Department of Revenue shall disclose to the commission
18 whatever information it may possess which would allow the
19 commission to fulfill this article; provided, however, that
20 such information shall only be disclosed and discussed in a
21 closed session. The Department of Revenue may require members
22 of the commission to execute confidentiality agreements before
23 the disclosure of information.

24 (k) The commission shall make an annual report on
25 the use of funds pursuant to this article. Such report shall

1 be made to the chair of the House Ways and Means Education
2 Committee, the chair of the Senate Finance and Taxation
3 Education Committee, and the members of the Joint Legislative
4 Advisory Committee on Economic Incentives established by
5 Section 40-18-379, at the times and in the manner requested by
6 the committee. Any publicly available version of the report
7 may redact information which the Department of Commerce
8 believes would place the state at a competitive disadvantage.

9 (l) The commission and the Department of Commerce
10 and Department of Revenue are authorized to adopt rules as
11 necessary to implement and administer the act.

12 (m) Members of the commission shall be public
13 officials for purposes of the ethics laws in Chapter 25 of
14 Title 36.

15 §40-18-403.

16 (a) If approved by the commission, a port credit is
17 allowed, in an amount equal to fifty dollars (\$50) per TEU,
18 three dollars (\$3) per net ton, or four cents (\$.04) per
19 kilogram for air freight, multiplied by the following:

20 (1) The port user's cargo volume in the year
21 12-month period for which the commission has granted approval
22 for the port user to claim the port credit, minus

23 (2) The port user's base cargo volume.

24 (b) The commission shall decrease the amount of the
25 port credit to ensure that the anticipated revenues for the

1 port facility and state will exceed the amount of the port
2 credit sought. The port credit may be conditioned on whatever
3 requirements the commission shall impose. The port credits
4 shall only be available to the extent that a port facility
5 user ships more than 105 percent of its cargo volume from the
6 prior year 12-month period immediately preceding the port
7 facility user's application. Moreover, the port credit shall
8 only be available to the extent a port facility user ships
9 more than 10 TEUs, for cargo measured by TEU, more than 75 net
10 tons, for cargo measured by net ton, or more than fifteen
11 thousand (15,000) kilograms for air cargo measured by
12 kilograms.

13 (c) The following methods may be used to realize the
14 port credit:

15 (1) The port credit may offset the tax levied by
16 Chapter 18, but not below zero. The port credit may also
17 offset the estimated payments of the tax levied by Chapter 18,
18 but not below zero; provided that, in no event shall the port
19 credits be allowed to reduce any estimated payment of the tax
20 levied by Chapter 18 before October 1, 2016. In any one year,
21 if the port credit exceeds the amount of tax liability, the
22 port user may carry forward the unused port credit. No
23 carryforward shall be allowed for more than five years. Rules
24 similar to those used for Section 40-18-15.2 shall be applied.

1 (2) A company may assign and convey a port credit to
2 another company if substantially all of the assets of the
3 company are assigned and conveyed in the same transaction.
4 Proof of such transfer shall be submitted to the Department of
5 Revenue.

6 (d) To the extent that the port credit is utilized
7 by the port user or by a transferee company, no deduction for
8 the related expenses shall be allowed.

9 (e) For any company which enters into an economic
10 development project agreement with the state, the project
11 agreement may provide for an allocation to the company of any
12 port credits which have not been allocated pursuant to this
13 article. Allocations made pursuant to this subsection shall
14 meet all of the following requirements:

15 (1) Allocations shall be made by the Governor and
16 approved by the commission;

17 (2) Allocations for a project shall not exceed three
18 million dollars (\$3,000,000);

19 (3) Allocations shall be granted only to a new
20 warehouse or distribution facility which commits to investing
21 at least twenty million dollars (\$20,000,000) at a single site
22 and to creating 75 net new jobs in Alabama;

23 (4) Port credits may not be used until the
24 Department of Commerce has received satisfactory proof that

1 the capital investment and job creation requirements have been
2 satisfied;

3 (5) Any port credit granted by this procedure shall
4 not be granted for more than a 3-year period; and

5 (6) Allocations shall not exceed one hundred dollars
6 (\$100) per TEU, three dollars (\$3) per net ton, or four cents
7 (\$0.04) per kilogram for air freight.

8 (7) Anticipated revenues for the state shall exceed
9 the Port Credit granted, and the project agreement shall
10 provide for recapture of all or part of the Port Credit should
11 the company default on its obligations in the project
12 agreement.

13 Section 3. A new Article 19 of Chapter 18 of Title
14 40, is added to the Code of Alabama 1975, to read as follows:

15 Article 19.

16 §40-18-410.

17 For the purposes of this article, the following
18 words and phrases shall have the following meanings:

19 (1) GROWING ALABAMA CREDIT. The credit provided for
20 in Section 40-18-413(a).

21 (2) INDUSTRY OR BUSINESS. An entity which would
22 conduct at a site an activity that is primarily described in
23 Section 40-18-372(1).

1 (3) LOCAL ECONOMIC DEVELOPMENT ORGANIZATIONS.

2 Organizations which are determined by the Department of
3 Commerce to meet both of the following criteria:

4 a. The organization is an Alabama entity not
5 operating for a profit, including, but not limited to, a
6 municipality or county, an industrial board or authority, a
7 chamber of commerce, or some other foundation or Alabama
8 nonprofit corporation charged with improving a community or
9 region of the state; and

10 b. The organization has a record of supporting or
11 otherwise participating in economic development activities in
12 some part of Alabama.

13 (4) RENEWAL OF ALABAMA COMMISSION. The Renewal of
14 Alabama Commission created by Section 40-18-402.

15 (5) SITE. Real property owned by a local economic
16 development organization and intended for use by an industry
17 or business.

18 §40-18-411.

19 (a) A local economic development organization which
20 owns a site may apply to the Department of Commerce for
21 funding to solve an inadequacy involving the site. The
22 application by the local economic development organization
23 shall include one or both of the following:

24 (1) If there is a pending expression of interest
25 about the site from an industry or business, a list of the

1 site preparation or public infrastructure work needed to make
2 the site acceptable to the industry or business; or

3 (2) If the site has been offered to one or more
4 industries or businesses but the offer did not result in the
5 industry or business locating on the site, a list of the site
6 preparation or public infrastructure work which, if it had
7 been completed, would have made the site acceptable to the
8 industries or businesses.

9 (b) For any site preparation or public
10 infrastructure work listed in an application to the Department
11 of Commerce, the application shall include ~~firm~~ quotes for the
12 completion of such work, following compliance with the
13 procedures set forth by the Department of Economic and
14 Community Affairs, as if the organization were disbursing
15 state funds received from such department.

16 (c) The application shall include an estimate of the
17 number of jobs, wages, and capital investment which would have
18 been undertaken by the industries or businesses referred to in
19 subsection (a).

20 (d) The application shall include proof that the
21 local economic development organization has in full force and
22 effect a conflict of interest policy consistent with that
23 found in the instructions to Form 1023 issued by the Internal
24 Revenue Service.

1 (e) The application shall include a notarized
2 affirmation by an officer of the local economic development
3 organization that the submission of the application did not
4 violate the conflict of interest policy referred to in
5 subsection (d).

6 §40-18-412.

7 (a) Following a review, if the Department of
8 Commerce should approve the application, it shall forward the
9 application to the Renewal of Alabama Commission.

10 (b) The Renewal of Alabama Commission shall consider
11 the application and shall approve it if it deems it worthy of
12 approval. Meetings of the commission are subject to Chapter
13 25A of Title 36; provided, however, that the commission may
14 meet by telephone or some other telecommunications device so
15 long as members of the public are allowed the opportunity to
16 listen to or otherwise observe the commission's deliberations.

17 (c) The approval of an application by the commission
18 shall specify the amount of money which the local economic
19 development organization is allowed to receive so that it can
20 complete the site preparation or public infrastructure work
21 specified in the application.

22 (d) Following approval by the commission, the
23 Department of Commerce shall enter into an agreement with the
24 local economic development organization, and the agreement
25 shall do all of the following:

1 (1) Require the local economic development
2 organization to use funding received as a result of this law
3 only for the purposes approved by the commission as expressed
4 in the agreement.

5 (2) Require the local economic development
6 organization to make periodic reports, not more often than
7 annually, to the Department of Commerce and the commission, as
8 required by the commission, on the disposition of the funds,
9 the marketing of the site, and the ultimate use of the site
10 until such time as it makes a final report.

11 (3) Require the local economic development
12 organization to provide a review of its financial accounts as
13 directed by the Renewal Commission.

14 ~~(d)~~ (e) For any approved applications, the
15 Department of Commerce shall notify the Department of Revenue
16 of the information specified in subsection (c).

17 §40-18-413.

18 (a) A taxpayer is allowed a Growing Alabama Credit
19 to be applied against the tax levied by Chapter 18. In no
20 event shall the Growing Alabama Credit cause a taxpayer's
21 income tax liability to be reduced by more than 50 percent.
22 Unused credits may be carried forward for no more than five
23 years.

24 (b) Growing Alabama Credits shall be granted to
25 taxpayers using an online system administered by the

1 Department of Revenue. The online system shall allow taxpayers
2 to agree to make a cash contribution to a local economic
3 development organization which was approved by the Renewal of
4 Alabama Commission, as provided in Section 40-18-412. The
5 online system shall ensure that credits are not granted for
6 contributions to a local economic development organization in
7 excess of the amounts approved by the Renewal of Alabama
8 Commission, as provided in Section 40-18-412.

9 (c) In no event shall Growing Alabama Credits be
10 allowed in excess of five million dollars (\$5,000,000) for
11 fiscal year 2016. In no event shall Growing Alabama Credits be
12 allowed in excess of ten million dollars (\$10,000,000) per
13 year for fiscal years 2017, 2018, 2019, and 2020.

14 (d) The Renewal of Alabama Commission shall reserve
15 at least 25 percent of the amounts specified in subsection (c)
16 for projects in targeted counties described in Section
17 40-18-376.1.

18 (e) To the extent that a Growing Alabama Credit is
19 used by a taxpayer, the taxpayer shall not be allowed any
20 deduction which would have otherwise been allowed for the
21 taxpayer's contribution. Credits may only be claimed by the
22 donating individual or corporate entity and may not be
23 assigned or transferred to any other taxpayer. A taxpayer may
24 not claim a credit for a donation made by any other entity,
25 including an entity taxed under subchapter S or subchapter K

1 of which the taxpayer is an owner, shareholder, partner, or
2 member.

3 §40-18-414.

4 (a) Upon receipt of funding provided by the tax
5 credit process in Section 40-18-413, the local economic
6 development organization shall proceed with the site
7 preparation or public infrastructure work that was specified
8 in the application required by Section 40-18-411.

9 (b) The local economic development organization
10 shall report to the Department of Commerce upon the completion
11 of the site preparation or public infrastructure work, upon
12 the transfer of the site to an industry or business, and at
13 other times as may be required or requested by the Department
14 of Commerce.

15 (c) The Department of Commerce shall make an annual
16 report on the use of funds pursuant to this article to the
17 chair of the House Ways and Means Education Committee, the
18 chair of the Senate Finance and Taxation Education Committee,
19 and the members of the Joint Legislative Advisory Committee on
20 Economic Incentives established by Section 40-18-379, at the
21 times, and in the manner, requested by the committee.
22 Beginning with the report for fiscal year 2019, the report
23 shall include a study of the economic impacts from the
24 expenditures made in prior years.

25 §40-18-415.

1 (a) All filings and applications made with any
2 department of the state government shall be made using forms
3 promulgated by such department. Any such filing shall be
4 treated as a tax return, subject to penalties imposed by the
5 Department of Revenue.

6 (b) Nothing in this article shall be construed to
7 constitute a guarantee or assumption by the state of any debt
8 of any company nor to authorize the credit of the state to be
9 given, pledged, or loaned to any company.

10 (c) Nothing in this article shall be construed to
11 make available to any taxpayer any right to the benefits
12 conferred by this article absent strict compliance with this
13 article.

14 (d) Nothing in this article shall be construed to
15 limit the powers otherwise existing for the Department of
16 Revenue to audit and assess a taxpayer claiming the Growing
17 Alabama Credit.

18 (e) Nothing in this article shall be construed to
19 change or lessen the requirements for claiming jobs act
20 incentives under the Alabama Jobs Act in Article 16 of this
21 chapter. Companies claiming the jobs act incentives must
22 strictly comply with Article 16 of this chapter.

23 (f) The Department of Commerce and Department of
24 Revenue are authorized to adopt rules as necessary to
25 implement and administer this article.

1 §40-18-416.

2 This article shall be repealed following the close
3 of fiscal year 2020, but the repeal shall not cause a
4 reduction or suspension of any credits awarded for fiscal year
5 2020 or for prior years during which the Growing Alabama
6 Credit was in effect.

7 Section 4. If a court of competent jurisdiction
8 adjudges invalid or unconstitutional any clause, sentence,
9 paragraph, section, or part of this act, such judgment or
10 decree shall not affect, impair, invalidate, or nullify the
11 remainder of this act, but the effect of the decision shall be
12 confined to the clause, sentence, paragraph, section, or part
13 of this act adjudged to be invalid or unconstitutional.

14 Section 5. All laws or parts of laws which conflict
15 with this act are repealed.

16 Section 6. This act shall become effective 90 days
17 following its passage and approval by the Governor, or its
18 otherwise becoming a law.

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[Handwritten Signature]

Speaker of the House of Representatives

Kay Ivey

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 25-FEB-16, as amended.

Jeff Woodard
Clerk

Senate	<u>22-MAR-16</u>	Amended and Passed
House	<u>22-MAR-16</u>	Concurred in Senate Amendment

APPROVED 4-4-16

TIME 4:00 PM

[Handwritten Signature: Robert Bentley]
GOVERNOR

Alabama Secretary Of State

Act Num....: 2016-102
Bill Num....: H-34

DATE: 2-23-20

RD 1 RFD

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 34

YEAS 100 NAYS 1

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees

This Bill was referred to the Standing Committee of the Senate on

FILED and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) 1 w/sub 0 by a vote of 13 yeas 0 nays 0 abstain

this 23 day of MARCH 20 10

Chairperson

DATE: 3-3-20

RF RD 2 CAL

DATE: 20

RE-REFERRED RE-COMMITTED

Committee

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 34

YEAS 33 NAYS 0

PATRICK HARRIS, Secretary

SPONSORS