

ACT #2021 - 2

- 1. HB192
- 2. 209653-5
- 3. By Representative Poole
- 4. RFD: Ways and Means Education
- 5. First Read: 11-FEB-2021
- 6. PFD: 01/28/2021



1
2 ENROLLED, An Act,

3 To amend Sections 40-18-375, 40-18-376, 40-18-376.3,
4 40-18-382, 40-18-383, 40-18-400, and 40-18-403, Code of
5 Alabama 1975, relating to tax credits for the Alabama Jobs
6 Act; to create a new Section 40-18-376.4, Code of Alabama
7 1975; to make nonsubstantive, technical revisions to update
8 the existing code language to current style; to allow
9 additional jobs and investment credits for underrepresented
10 businesses and to provide definitions; to allow additional
11 jobs credits for pharmaceutical and medical research,
12 development, and manufacturing; to extend the investment
13 credits to technology companies; to extend the sunset date for
14 the Alabama Jobs Act; to increase the annual cap of Jobs Act
15 credits; to specify the reservation of credits for projects in
16 targeted or jumpstart counties; to provide further definitions
17 and allowable credits for the Alabama Port Credit; to
18 reestablish the Growing Alabama Credits; to allow a mechanism
19 for an economic development organization to apply for funding;
20 to allow for the credit to be taken against the state portion
21 of the financial institution excise tax and the insurance
22 premiums tax; to provide for an annual cap for the amount of
23 Growing Alabama Credits; to clarify the reservation of credits
24 for projects in targeted or jumpstart counties; to allow the
25 credit to be taken by owners of S corporations and other

1 partnerships; to provide rulemaking authority; and to provide
2 for a sunset of the Growing Alabama Credits after calendar
3 year 2023.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 40-18-375, 40-18-376,
6 40-18-376.3, 40-18-382, 40-18-383, 40-18-400, and 40-18-403,
7 of the Code of Alabama 1975, are amended to read as follows:

8 "§40-18-375.

9 "(a) (1) If provided for in the project agreement and
10 in accordance with the terms therein, the incentivized company
11 is allowed a jobs credit against utility taxes, in an annual
12 amount equal to 3 percent of the wages paid to eligible
13 employees during the prior year. The incentive period shall be
14 10 years.

15 "(2) If the incentivized company is engaged in
16 pharmaceutical, biomedical, medical technology or medical
17 supplies manufacturing or their related research and
18 development activities, the incentivized company is allowed a
19 jobs credit against utility taxes, in an annual amount equal
20 to 4 percent of the wages paid to eligible employees during
21 the prior year. The incentive period shall be 10 years. This
22 would apply to companies that predominantly conduct an
23 activity described by NAICS code 3254, 339112, or 339113, to
24 include related research and development.

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

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

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

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

1 "b. Prior to claiming the jobs credit as provided in
2 this subdivision, the incentivized company shall submit to the
3 Department of Commerce a certification as to the wages paid to
4 eligible employees during the prior year. Following such
5 examination as it deems necessary, the Department of Commerce
6 may certify the information and deliver same to the Department
7 of Revenue. Thereafter, the Department of Revenue shall allow
8 the jobs credit.

9 "(c) The realization methods in subsection (b) shall
10 not create debts of the state within the meaning of Section
11 213 of the Official Recompilation of the Constitution of
12 Alabama of 1901, as amended.

13 "(d) The Department of Finance shall ~~promulgate~~
14 adopt regulations to ensure that the credit in no case would
15 reduce the distribution for the Alabama Special Mental Health
16 Trust Fund.

17 "\$40-18-376.

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

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

1 "(2) To offset the financial institution excise tax
2 found in Chapter 16;

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

6 "(4) To offset utility taxes; or

7 "(5) To offset state license taxes levied by Article
8 2 of Chapter 21 of Title 40 of the Code of Alabama 1975.

9 "~~(5)~~ (6) To offset some combination of the
10 foregoing, so long as the same credit is used only once.

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

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

20 "(1)a. The investment credit may be claimed as a
21 credit against the taxes in subsection (a) that are actually
22 paid. In any one year, if the credit exceeds the amount of
23 taxes that are allowed to be offset by the project agreement
24 and that are owed by the incentivized company, the
25 incentivized company may carry the credit forward, to the

1 extent allowed in the project agreement. No carryforward shall
2 be allowed for more than five years. Rules similar to those
3 used for Section 40-18-15.2 shall be applied.

4 "b. Prior to claiming the investment credit as
5 provided in this subdivision, the incentivized company shall
6 submit to the Department of Commerce a certification as to its
7 capital investment as of the dates specified in the project
8 agreement. Following such examination as it deems necessary,
9 the Department of Commerce may certify the information and
10 deliver the same to the Department of Revenue. Thereafter, the
11 Department of Revenue shall allow the investment credit.

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

1 and it shall also apply to offset the income tax liability of
2 employee/owners of a flow-through entity owned by an employee
3 stock ownership plan trust.

4 "(3) All or part of the first three years of the
5 investment credit may be transferred by the incentivized
6 company and applied by another person or company as follows:

7 "a. A transfer of the credit shall be made by
8 written, notarized contract.

9 "b. No such transfer shall occur before the contract
10 is approved by the Secretary of Commerce. In determining
11 whether to approve any transfer, the Secretary shall make all
12 of the following findings:

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

17 "(ii) That the proposed transfer will enhance the
18 economic benefits of the qualifying project; and

19 "(iii) That the transfer is at a value of at least
20 85 percent of the present value of the credits.

21 "Upon making affirmative findings on the criteria
22 set forth above, the Secretary of Commerce shall recommend to
23 the Governor that the transfer should be approved. Information
24 about the proposed transfer shall be forwarded to the
25 Governor, and the Governor may include provisions about the

1 transfer in the project agreement, or in an amendment thereto
 2 executed by the Governor and the incentivized company.

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

6 "(i) Certifications as to its capital investment as
 7 of the dates specified in the project agreement. Following
 8 such examination as it deems necessary, the Department of
 9 Commerce may certify the information and deliver the same to
 10 the Department of Revenue.

11 "(ii) Certified information about the transfers,
 12 including identifying information about the transferees and
 13 the amount of credit each transferee should claim. Following
 14 such examination as it deems necessary, the Department of
 15 Commerce may certify the information and deliver the same to
 16 the Department of Revenue.

17 "d. Upon receipt of the certifications from the
 18 Department of Commerce as required by paragraph c., the
 19 Department of Revenue shall thereafter allow the appropriate
 20 amount of the investment credit to offset the tax liability of
 21 the transferee for any of the taxes listed in subsection (a)
 22 and, for any project agreements entered into after January 1,
 23 2021 only, state license taxes levied by Article 2 of Chapter
 24 21 of Title 40 of the Code of Alabama 1975. In any one year,
 25 if the investment credit exceeds the amount of taxes that are

1 allowed to be offset and that are owed by the transferee, the
2 transferee may carry the credit forward for five years. A
3 transferee may not make a subsequent transfer of the credit.

4 "e. If a credit is transferred, an incentivized
5 company that is later determined by the Secretary of Commerce
6 to have defaulted under the project agreement shall be liable
7 for the underpayment of tax attributable to the credit and for
8 penalties and interest thereon. Unless the purchase of the
9 credits is determined to have been made in a fraudulent
10 manner, or is a transfer in anticipation of bankruptcy,
11 insolvency, or closure, a transferee shall not be liable for
12 the unpaid tax attributable to the credit, or for penalties or
13 interest thereon.

14 "(c) The realization methods in subsection (b) shall
15 not create debts of the state within the meaning of Section
16 213 of the Official Recompilation of the Constitution of
17 Alabama of 1901, as amended.

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

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

8 "(3) To the extent the investment credit is used to
9 offset liability for the tax imposed by Section 40-21-82 or
10 Article 2 of Chapter 21 of Title 40 of the Code of Alabama
11 1975, the Department of Finance shall adopt rules to ensure
12 that the credit in no case would reduce the distribution for
13 the Alabama Special Mental Health Trust Fund.

14 "§40-18-376.3.

15 "(a) (1) This section shall be applicable to a
16 technology company so long as there is a project agreement
17 which provides that Alabama is or will become the company's
18 headquarters, the place of residence of its top three
19 executives, and the place of residence of at least 75 percent
20 of its employees.

21 "(2) In making the findings required by Section
22 40-18-373(1), a technology company that proposes a qualifying
23 project shall be an approved company for purposes of this
24 section only if the Secretary of Commerce makes the additional

1 finding that the qualifying project will increase the economic
2 diversity of, or otherwise benefit, the state.

3 "(3) A qualifying project shall be deemed to be in
4 existence notwithstanding the requirements of Section
5 40-18-372 so long as at least 10 new employees are employed at
6 the qualifying project, absent a finding of extraordinary
7 circumstances by the Secretary of Commerce.

8 "(b) If provided for in the project agreement, the
9 following shall be allowed to any company which meets all the
10 criteria in subsection (a):

11 ~~(1) A qualifying project shall be deemed to be in~~
12 ~~existence notwithstanding the requirements of Section~~
13 ~~40-18-372 so long as at least five new employees are employed~~
14 ~~at the qualifying project, absent a finding of extraordinary~~
15 ~~circumstances by the Secretary of Commerce. A jobs credit~~
16 ~~against utility taxes, in an annual amount equal to 4 percent~~
17 ~~of the wages paid to eligible employees during the prior year.~~
18 ~~The incentive period shall be 10 years.~~

19 ~~"(2) The jobs credit provided in Section~~
20 ~~40-18-375(a) shall include an additional 2 percent above that~~
21 ~~otherwise allowed. An investment credit as provided in Section~~
22 ~~40-18-376.~~

23 "(c) A "technology company" is any company which
24 meets all the criteria in subdivision (1) or (2):

1 "(1) A company which earns at least 75 percent of
2 its revenues from either of the following:

3 "a. Activities within subsector 518; industry group
4 5112, 5121 (other than 51213), 5415, or 5417; or industry
5 51913 of the 2012 North American Industry Classification
6 System, or any similar classification system developed in
7 conjunction with the United States Department of Commerce or
8 Office of Management and Budget.

9 "b. The use of technology to develop new coding or
10 processes for the creation or delivery of goods or services in
11 the following fields, or any additional activities determined
12 by the Secretary of Commerce to be beneficial to the
13 enhancement of businesses rooted in either of the following
14 fields:

15 "1. Any of the fields of education, healthcare,
16 energy, agriculture, infrastructure, software, robotics,
17 nutrition, aerospace, automotive, or financial services.

18 "2. Any fields related to science, technology,
19 engineering, or mathematics.

20 "(2) A company which, for a fixed term, educates and
21 mentors early-stage technology companies recruited to a
22 location in Alabama, with the goal of accelerating the
23 companies' development and growth.

24 "§40-18-382.

1 "The incentives authorized by this article shall not
2 be available for qualifying projects for which project
3 agreements have not been executed on or prior to ~~December 31,~~
4 ~~2020~~ July 31, 2023, unless the Legislature, ~~by joint~~
5 ~~resolution or other applicable action of both houses, votes~~
6 enacts legislation to continue or reinstate the incentives for
7 new projects after that date. No action or inaction on the
8 part of the Legislature shall reduce or suspend any incentive
9 awarded pursuant to this article in any past or future
10 calendar year with respect to qualifying projects for which
11 project agreements have been executed on or prior to ~~December~~
12 ~~31, 2020~~ July 31, 2023, it being the sole intention of this
13 section that failure of the Legislature to ~~adopt a joint~~
14 ~~resolution or other applicable action of both houses~~ enact
15 legislation continuing the incentives authorized by this
16 article for periods after ~~December 31, 2020~~ July 31, 2023,
17 shall affect only the availability of the incentives to
18 qualifying projects for which project agreements have not been
19 executed on or prior to ~~December 31, 2020~~ July 31, 2023, and
20 shall not affect qualifying projects for which project
21 agreements have been executed on or prior to ~~December 31, 2020~~
22 July 31, 2023.

23 "§40-18-383.

24 "(a) At no time prior to the calendar year ending
25 December 31, 2020, shall the annualized balance of outstanding

1 jobs act incentives exceed \$300 million, which amount would
 2 increase to three hundred twenty-five million dollars
 3 (\$325,000,000) for the calendar year ending December 31, 2021
 4 and three hundred fifty million dollars (\$350,000,000) for the
 5 calendar year ending December 31, 2022, unless the
 6 ~~Legislature, by joint resolution or other applicable action of~~
 7 ~~both houses, votes~~ enacts legislation to allow additional jobs
 8 act incentives. Of the above annualized balance, twenty
 9 million dollars (\$20,000,000) shall apply to qualifying
 10 projects located in targeted or jumpstart counties as
 11 described in Section 40-18-376.1.

12 "(b) Jobs act incentives shall not be available to
 13 any project for which substantial construction activities have
 14 begun by July 2, 2015.

15 "(c) Jobs act incentives under this article shall
 16 not be available for any qualifying project unless at least 80
 17 percent of the eligible employees created by the qualifying
 18 project are employed full time.

19 "\$40-18-400.

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

22 "(1) BASE CARGO VOLUME. The greater of the
 23 following:

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

4 "b. Ten TEUs~~7~~ for cargo measured by TEU, ~~or~~ 75 net
5 tons~~7~~ for cargo measured by net ton, or 400 VEUs for cargo
6 measured by VEU.

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

14 "(3) COMMISSION. The Renewal of Alabama Commission
15 created by Section 40-18-402.

16 "(4) COMPANY. Anyone or anything which has the
17 powers to conduct the activities required to claim the port
18 credit.

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

1 "(6) PORT FACILITY. Any ~~publicly owned~~ type of deep
2 draft ship terminal facility located within this state's ports
3 of entry, including publicly owned inland ports, through which
4 cargo is transported by way of a waterborne ship, air cargo
5 aircraft, or railroad, to or from destinations inside or
6 outside this state and which handles cargo owned by third
7 parties in addition to cargo owned by the port facility's
8 owner.

9 "(7) PORT CREDIT. The credit provided for in Section
10 40-18-403.

11 "(8) PORT FACILITY USER. A company engaged in
12 manufacturing, warehousing, or distribution which uses a port
13 facility.

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

17 "(10) VEHICLE. Any motorized vehicle as defined in
18 Section 32-1-1.1.

19 "(11) VEU. A "Vehicle Equivalent Unit" volumetric
20 measure of one (1) cubic meter.

21 "\$40-18-403.

22 "(a) If approved by the commission, a port credit is
23 allowed, in an amount equal to fifty dollars (\$50) per TEU,
24 three dollars (\$3) per net ton, ~~or~~ four cents (\$0.04) per

1 kilogram for air freight, or two dollars and ninety-one cents
2 (\$2.91) per VEU, multiplied by the following:

3 "(1) The port user's cargo volume in the 12-month
4 period for which the commission has granted approval for the
5 port user to claim the port credit, minus

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

7 "(b) The commission shall decrease the amount of the
8 port credit to ensure that the anticipated revenues for the
9 port facility and state will exceed the amount of the port
10 credit sought. The port credit may be conditioned on whatever
11 requirements the commission shall impose. The port credits
12 shall only be available to the extent that a port facility
13 user ships more than 105 percent of its cargo volume from the
14 12-month period immediately preceding the port facility user's
15 application. Moreover, the port credit shall only be available
16 to the extent a port facility user ships more than 10 TEUs,
17 for cargo measured by TEU, more than 75 net tons, for cargo
18 measured by net ton, or more than fifteen thousand (15,000)
19 kilograms for air cargo measured by kilograms, or more than
20 400 VEUs, for cargo measured by VEU.

21 "(c) The following methods may be used to realize
22 the port credit:

23 "(1) The port credit may offset the tax levied by
24 this chapter, but not below zero. The port credit may also
25 offset the estimated payments of the tax levied by this

1 chapter, but not below zero. In no event shall the port
 2 credits be allowed to reduce any estimated payment of the tax
 3 levied by this chapter before October 1, 2016. In any one
 4 year, if the port credit exceeds the amount of tax liability,
 5 the port user may carry forward the unused port credit. No
 6 carryforward shall be allowed for more than five years. Rules
 7 similar to those used for Section 40-18-15.2 shall be applied.

8 "(2) A company may assign and convey a port credit
 9 to another company if substantially all of the assets of the
 10 company are assigned and conveyed in the same transaction.
 11 Proof of such transfer shall be submitted to the Department of
 12 Revenue.

13 "(d) To the extent that the port credit is utilized
 14 by the port user or by a transferee company, no deduction for
 15 the related expenses shall be allowed.

16 "(e) For any company which enters into an economic
 17 development project agreement with the state, the project
 18 agreement may provide for an allocation to the company of any
 19 port credits which have not been allocated pursuant to this
 20 article. Allocations made pursuant to this subsection shall
 21 meet all of the following requirements:

22 "(1) Allocations shall be made by the Governor and
 23 approved by the commission.

24 "(2) Allocations for a project shall not exceed
 25 three million dollars (\$3,000,000).

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

5 "(4) Port credits may not be used until the
6 Department of Commerce has received satisfactory proof that
7 the capital investment and job creation requirements have been
8 satisfied.

9 "(5) Any port credit granted by this procedure shall
10 not be granted for more than a 3-year period.

11 "(6) Allocations shall not exceed one hundred
12 dollars (\$100) per TEU, three dollars (\$3) per net ton, ~~or~~
13 four cents (\$0.04) per kilogram for air freight, or two
14 dollars and ninety one cents (\$2.91) per VEU.

15 "(7) Anticipated revenues for the state shall exceed
16 the port credit granted, and the project agreement shall
17 provide for recapture of all or part of the port credit should
18 the company default on its obligations in the project
19 agreement."

20 Section 2. Sections 3 through 9 shall be known and
21 may be cited as the Growing Alabama Act.

22 Section 3. For the purposes of this act, the
23 following words and phrases shall have the following meanings:

24 (1) ACCELERATOR. A company which, for a fixed term,
25 educates and mentors early-stage technology companies

1 recruited to a location in Alabama, with the goal of
2 accelerating the companies' development and growth.

3 (2) CAPITAL IMPROVEMENTS. Construction and
4 rehabilitation expenses of a capital nature at an inland port
5 or intermodal facility, the dredging of waterways in the
6 immediate vicinity of an inland port, and the expansion of
7 onsite storage facilities at an inland port or intermodal
8 facility.

9 (3) ECONOMIC DEVELOPMENT ACTIVITIES. Activities and
10 initiatives which enhance the use of, and flow of goods
11 through, an inland port or intermodal facility.

12 (4) ECONOMIC DEVELOPMENT ORGANIZATION. A local
13 economic development organization or a state economic
14 development organization.

15 (5) GROWING ALABAMA CREDIT. The credit provided for
16 in subsection (a) of Section 6.

17 (6) INDUSTRY OR BUSINESS. An entity which would
18 conduct at a site an activity that is primarily described in
19 Section 40-18-372(1), Code of Alabama 1975.

20 (7) INLAND PORT. Any port on a navigable river away
21 from traditional land, air, and coastal borders.

22 (8) INTERMODAL FACILITY. Any facility which
23 interconnects two or more different modes of air, rail, or
24 road traffic serving multiple customers, and which involves
25 storage facilities.

1 (9) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION.

2 Organizations which are determined by the Department of
3 Commerce to meet both of the following criteria: a. The
4 organization is an Alabama entity not operating for a profit,
5 including, but not limited to, a municipality or county, an
6 industrial board or authority, a chamber of commerce, or some
7 other foundation or Alabama nonprofit corporation charged with
8 improving a community or region of the state. b. The
9 organization has a record of supporting or otherwise
10 participating in economic development activities in some part
11 of Alabama.

12 (10) RENEWAL OF ALABAMA COMMISSION. The Renewal of
13 Alabama Commission created by Section 40-18-402, Code of
14 Alabama 1975.

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

18 (12) STATE ECONOMIC DEVELOPMENT ORGANIZATION.

19 Organizations which are determined by the Department of
20 Commerce to be an Alabama entity not operating for a profit
21 which is charged with improving the state or a region of the
22 state and has a record of supporting or otherwise
23 participating in economic development activities in the state.

24 Section 4. (a) (1) A local economic development
25 organization which owns a site may apply to the Department of

1 Commerce for funding to solve an inadequacy involving the
2 site. The application by the local economic development
3 organization shall include at least one of the following:

4 a. If there is a pending expression of interest
5 about the site from an industry or business, a list of the
6 site preparation or public infrastructure work needed to make
7 the site acceptable to the industry or business.

8 b. If the site has been offered to one or more
9 industries or businesses but the offer did not result in the
10 industry or business locating on the site, a list of the site
11 preparation or public infrastructure work which, if it had
12 been completed, would have made the site acceptable to the
13 industries or businesses.

14 c. If the site is an industrial or research park
15 which needs connections to interstates, highways, roadways,
16 rail systems, or sewer, fiber, electrical, gas, or water
17 infrastructure, a list of the site preparation or
18 infrastructure work needed.

19 d. Capital improvements or economic development
20 activities at an inland port or intermodal facility, as
21 described in Section 3; provided that the application is
22 accompanied by an economic impact report on such improvements
23 or activities.

1 e. Any site improvement or public infrastructure
2 work in census tracts that meet the definition of low-income
3 communities found in 26 U.S.C. 45D(e).

4 (2) An economic development organization may apply
5 to the Department of Commerce for funding to undertake any of
6 the following issues:

7 a. The creation, operation, or support of an
8 accelerator for technology companies, provided that the
9 application is accompanied by an economic impact report.
10 Technology companies shall include companies which earn or
11 reasonably expect to earn at least 75% of their revenues from
12 sources described in Section 40-18-376.3(c)(1).

13 b. The construction, maintenance, promotion,
14 operation, management, leasing, and subleasing of an
15 agricultural center which includes a multi-use facility and
16 related commercial and noncommercial structures for livestock,
17 equestrian, small animal shows and events, spectator events,
18 trade shows, educational conferences, agricultural and
19 agricultural related industries, educational, demonstrational
20 or training purposes, educational and training conferences or
21 events, recreational vehicle rallies, recreational vehicle
22 multi-day parking, hosting of corporate and non-corporate
23 organization meetings, use as fair grounds, operation of
24 retail activities, and other events and facilities expected to
25 draw participants and spectators from states located across

1 the southeastern United States, with a projected total annual
2 economic impact upon completion of all phases of the
3 agricultural center at least thirty-five million dollars
4 (\$35,000,000) and with the related and supporting
5 infrastructure and facilities having a projected capital
6 expenditure upon completion of all phases of the agricultural
7 center of at least one hundred million dollars (\$100,000,000);
8 provided that the application is accompanied by an economic
9 impact report on the agricultural center.

10 c. The creation, operation, or support of programs
11 designed to provide funding or other resources for businesses
12 which are described in Section 40-18-376.4(c).

13 (b) For any site preparation or public
14 infrastructure work provided in subdivision (a)(1), the
15 application shall include quotes for the completion of such
16 work, following compliance with the procedures set forth by
17 the Department of Economic and Community Affairs, as if the
18 organization were disbursing state funds received from such
19 department.

20 (c) The application provided in paragraph (a)(1) a.
21 or b. shall include an estimate of the number of jobs, wages,
22 and capital investment which would have been undertaken by the
23 industries or businesses referred to in paragraph (a)(1) a. or
24 b.

1 (d) The application provided in subsection (a) shall
2 include proof that the economic development organization has
3 in full force and effect a conflict of interest policy
4 consistent with that found in the instructions to Form 1023
5 issued by the Internal Revenue Service.

6 (e) The application provided in subsection (a) shall
7 include a notarized affirmation by an officer of the economic
8 development organization that the submission of the
9 application did not violate the conflict of interest policy
10 referred to in subsection (d).

11 Section 5. (a) Following a review, if the Department
12 of Commerce should approve the application provided in
13 subsection (a) of Section 4, it shall forward the application
14 to the Renewal of Alabama Commission.

15 (b) The Renewal of Alabama Commission shall consider
16 the application and shall approve it if it deems it worthy of
17 approval. As to improvements at industrial sites, the
18 commission shall give preference to sites with at least 1,000
19 acres of available space. As to applications for projects
20 located in communities which have the potential to provide
21 additional funding separate from the Growing Alabama Credits,
22 the commission shall take into consideration whether such
23 separate funding is to be provided to the project which is the
24 subject of the application. Meetings of the commission are
25 subject to Chapter 25A of Title 36, Code of Alabama 1975.

1 Notwithstanding the foregoing, the commission may meet by
2 telephone or some other telecommunications device so long as
3 members of the public are allowed the opportunity to listen to
4 or otherwise observe the commission's deliberations.

5 (c) The approval of an application by the commission
6 shall specify the amount of money which the economic
7 development organization is allowed to receive so that it can
8 complete the work specified in the application.

9 (d) Following approval by the commission, the
10 Department of Commerce shall enter into an agreement with the
11 economic development organization which shall do all of the
12 following:

13 (1) Require the economic development organization to
14 use funding received as a result of this law only for the
15 purposes approved by the commission as expressed in the
16 agreement.

17 (2) Require the economic development organization to
18 make periodic reports, not more often than annually, to the
19 Department of Commerce and the commission, as required by the
20 commission, on the disposition of the funds. As to a project
21 described in subdivision (a) (1), of Section 4, the report
22 shall include information on the marketing of the site, and
23 the ultimate use of the site until such time as it makes a
24 final report. As to a project related to inland ports or
25 intermodal facilities as described in paragraph (a) (1) d. of

1 Section 4 or a project related to a technology company or
2 agricultural center as described in subdivision (a)(2) of
3 Section 4, the report shall include an economic impact report.

4 (3) Require the economic development organization to
5 provide a review of its financial accounts as directed by the
6 Renewal of Alabama Commission.

7 (e) For any approved applications, the Department of
8 Commerce shall notify the Department of Revenue of the
9 information specified in subsection (c).

10 (f) The Department of Commerce shall publish on its
11 website a list of all approved applications and a list of the
12 economic development organizations which made the approved
13 applications.

14 Section 6. (a) A taxpayer is allowed a Growing
15 Alabama Credit to be applied against all of the following:

16 (1) To offset the income taxes levied in this
17 chapter, or as an estimated tax payment of income taxes.

18 (2) To offset the state portion of the financial
19 institution excise tax levied in Chapter 16 of Title 40 of the
20 Code of Alabama 1975.

21 (3) To offset the insurance premium tax levied by
22 subsection (a) of Section 27-4A-3, Code of Alabama 1975.

23 (4) To offset state license taxes levied by Article
24 2 of Chapter 21 of Title 40 of the Code of Alabama 1975.

1 (b) In no event shall the Growing Alabama Credit
2 cause a taxpayer's tax liability to be reduced by more than 50
3 percent. Unused credits may be carried forward for no more
4 than five years.

5 (c) Growing Alabama Credits shall be granted to
6 taxpayers using an online system administered by the
7 Department of Revenue. The online system shall allow taxpayers
8 to agree to make a cash contribution to an economic
9 development organization which was approved by the Renewal of
10 Alabama Commission, as provided in Section 5. The online
11 system shall ensure that credits are not granted for
12 contributions to an economic development organization in
13 excess of the amounts approved by the Renewal of Alabama
14 Commission, as provided in Section 5.

15 (d) The cumulative amount of funding approved
16 pursuant to this section shall not exceed twenty million
17 dollars (\$20,000,000) in a calendar year. Of that amount, no
18 more than four million dollars (\$4,000,000) of funding in the
19 aggregate may be approved for accelerator programs as
20 described in Section 40-18-376.3 (c) (2), Code of Alabama 1975.

21 (e) The Renewal of Alabama Commission shall reserve
22 at least 25 percent of the amounts specified in subsection (c)
23 for projects located in targeted or jumpstart counties as
24 defined in Section 40-18-376.1, Code of Alabama 1975. In the
25 event applications are not received and credits are not

1 allocated for projects in these areas by the close of the
 2 second quarter of the program year, the funds may revert for
 3 allocations of other project applications.

4 (f) To the extent that a Growing Alabama Credit is
 5 used by a taxpayer, the taxpayer shall not be allowed any
 6 deduction which would have otherwise been allowed for the
 7 taxpayer's contribution. Credits may only be claimed by the
 8 donating individual or corporate entity and may not be
 9 assigned or transferred to any other taxpayer. For purposes of
 10 this section, an individual taxpayer includes an individual
 11 who is a shareholder of an Alabama S corporation or a partner
 12 or member of a Subchapter K entity that made a contribution to
 13 an economic development organization which was approved by the
 14 Renewal of Alabama Commission.

15 (g) The Department of Finance shall adopt rules to
 16 ensure that the Growing Alabama Credit in no case would reduce
 17 the distribution for the Alabama Special Mental Health Trust
 18 Fund by using any unencumbered funds.

19 Section 7. (a) Upon receipt of funding provided by
 20 the tax credit process in Section 6, the economic development
 21 organization shall proceed with the work that was specified in
 22 the application required by Section 4.

23 (b) (1) As to a project described in subdivision
 24 (a) (1) of Section 4, the economic development organization
 25 shall report to the Department of Commerce upon the completion

1 of the site preparation or public infrastructure work, upon
 2 the transfer of the site to an industry or business, and at
 3 other times as may be required or requested by the Department
 4 of Commerce.

5 (2) As to a project described in subdivision (a) (2)
 6 of Section 4, the economic development organization shall
 7 report to the Department of Commerce upon the completion of
 8 the work and at such times as may be required or requested by
 9 the Department of Commerce.

10 (c) The Department of Commerce shall make an annual
 11 report on the use of funds pursuant to this act to the Chair
 12 of the House Ways and Means Education Committee, the Chair of
 13 the Senate Finance and Taxation Education Committee, and the
 14 members of the Joint Legislative Advisory Committee on
 15 Economic Incentives established by Section 40-18-379, Code of
 16 Alabama 1975, at the times, and in the manner, requested by
 17 the committee.

18 Section 8. (a) All filings and applications made
 19 with any department of the state government shall be made
 20 using forms promulgated by such department. Any such filing
 21 shall be treated as a tax return, subject to penalties imposed
 22 by the Department of Revenue.

23 (b) Nothing in this act shall be construed to
 24 constitute a guarantee or assumption by the state of any debt

1 of any company nor to authorize the credit of the state to be
2 given, pledged, or loaned to any company.

3 (c) Nothing in this act shall be construed to make
4 available to any taxpayer any right to the benefits conferred
5 by this act absent strict compliance with this act.

6 (d) Nothing in this act shall be construed to limit
7 the powers otherwise existing for the Department of Revenue to
8 audit and assess a taxpayer claiming the Growing Alabama
9 Credit.

10 (e) Nothing in this act shall be construed to change
11 or lessen the requirements for claiming jobs act incentives
12 under the Alabama Jobs Act in Article 16 of Chapter 18 of
13 Title 40 of the Code of Alabama 1975. Companies claiming the
14 jobs act incentives must strictly comply with Article 16 of
15 Chapter 18 of Title 40 of the Code of Alabama 1975.

16 (f) The Department of Commerce and Department of
17 Revenue are authorized to adopt rules as necessary to
18 implement and administer this act.

19 Section 9. The Growing Alabama Credits provided in
20 this act shall not be available for qualifying applicants as
21 described in this act, for which applications are not approved
22 on or prior to July 31, 2023, unless the Legislature enacts
23 legislation to extend the date. This shall only affect the
24 availability of credits for applications not approved on or
25 prior to July 31, 2023, and shall not cause a reduction or

1 suspension of any credits awarded on or prior to July 31,
2 2023.

3 Section 10. A new section 40-18-376.4 is added to
4 Article 16, Chapter 18 of Title 40, Code of Alabama 1975, to
5 read as follows:

6 §40-18-376.4.

7 (a) This section shall be applicable to an
8 underrepresented company, as defined herein. In making the
9 findings required by Section 40-18-373(1), an underrepresented
10 company that proposes a qualifying project shall be an
11 approved company for purposes of this section only if the
12 Secretary of Commerce makes the additional finding that the
13 qualifying project will increase economic diversity and will
14 benefit the state.

15 (b) If provided for in the project agreement, the
16 following shall be allowed to any company which meets all the
17 criteria in subsection (a):

18 (1) Absent a finding of extraordinary circumstances
19 by the Secretary of Commerce, a qualifying project shall be
20 deemed to be in existence notwithstanding the requirements of
21 Section 40-18-372 so long as 10 new jobs are created.

22 (2) A jobs credit against utility taxes, in an
23 annual amount equal to 4 percent of the wages paid to eligible
24 employees during the prior year.

1 (3) The investment credit provided in Section
2 40-18-376(a) shall have an incentive period of 15 years.

3 (c) An "underrepresented company" is any company
4 which meets all the criteria in the following paragraph (1) or
5 (2):

6 (1) The company is a for-profit business
7 headquartered in a community eligible for investment through
8 the federal New Markets Tax Credit program under 26 USC
9 45D(e), has fewer than 10 employees at the time the project
10 agreement is executed, and has average gross revenues of less
11 than \$500,000 in the company's three years prior to the
12 execution of the project agreement; or

13 (2) The company is a for-profit business that is
14 independently owned and controlled and is at least 51 percent
15 owned and controlled by one or more underrepresented persons
16 or, in the case of a publicly-owned business, the company is a
17 for-profit business of which at least 51 percent of the stock
18 is owned and controlled by one or more underrepresented
19 persons and whose daily management and operations are under
20 the control of one or more underrepresented persons. As used
21 herein, an underrepresented person is a United States citizen
22 who is a woman, or an African American.

23 Section 11. Any action taken prior to the effective
24 date of this act by the Governor by proclamation or otherwise
25 or any action taken by any agency or department to extend

1 benefits or credits under the Alabama Jobs Act or the Growing
2 Alabama Act is hereby ratified and confirmed.

3 Section 12. The provisions of this act are
4 severable. If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not affect the part
6 which remains.

7 Section 13. This act shall become effective
8 immediately upon its passage and approval by the Governor, or
9 its otherwise becoming law.

Mac McClatchey

Speaker of the House of Representatives

[Signature]

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 04-FEB-21, as amended.

Jeff Woodard
Clerk

Senate

10-FEB-21

Passed

APPROVED

2-12-2021

TIME

8:32 AM

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num....: 2021-2
Bill Num...: H-192

Recv'd 02/12/21 09:30amSLF

SPONSOR

Poole

SPONSORS

HOUSE ACTION

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. 192

YEAS 89 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 _____

SENATE ACTION

DATE: 2-4 2021

RD 1 RFD FATE

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

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) _____ w/sub _____ by a vote of yeas 11 nays 0 abstain 0 this 9th day of February 2021, Chairperson FATE

DATE: 2-9 2021

RF FAU RD 2 CAL

DATE: 2-10 2021

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 192.

YEAS 27 NAYS 0

PATRICK HARRIS,
Secretary