

HB241 ENROLLED



1 Z4OGWR-3

2 By Representatives Garrett, Ledbetter, Daniels, Reynolds

3 RFD: Ways and Means Education

4 First Read: 04-Apr-23

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1 Enrolled, An Act,

2 Relating to the Alabama Jobs Act and the Growing
3 Alabama Act and tourism; to amend Sections 40-18-370,
4 40-18-372, 40-18-374, 40-18-375, 40-18-376, 40-18-376.1,
5 40-18-376.2, 40-18-376.3, 40-18-376.4, 40-18-377, 40-18-378,
6 40-18-382, 40-18-383, 40-18-417.1, 40-18-417.2, 40-18-417.3,
7 40-18-417.4, 40-18-417.7, and 40-9B-4.1, Code of Alabama 1975,
8 to extend the Alabama Jobs Act sunset date to July 31, 2028;
9 to increase the annualized cap on outstanding Alabama Jobs Act
10 incentives by twenty-five million dollars each year for five
11 years up to four hundred seventy-five million dollars; to
12 increase the investment tax credit transfer time to provide
13 that the first five years of the investment credit may be
14 transferred by the incentivized company and applied by another
15 person or company under the Alabama Jobs Act; to extend the
16 Growing Alabama Act sunset date to July 31, 2028, to increase
17 the annual cap on funding approved pursuant to the Growing
18 Alabama Act incrementally to thirty-five million dollars; to
19 remove certain programs from the Growing Alabama Act for the
20 transfer to Innovate Alabama; to create the Sweet Home Alabama
21 Tourism Investment Act; to define certain terms; to require
22 the Alabama Tourism Department to develop standards for the
23 review and approval of certified tourism destination projects;
24 to designate the Alabama Tourism Advisory Board to review and
25 certify qualifying projects; to authorize tax rebates for
26 certain businesses for certified tourism destination projects;
27 to provide for an annual cap on tax rebates; to create the
28 Tourism Project Sales Tax Incentive Fund; to establish the



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29 process for renewing a tax rebate; and to establish reporting
30 requirements of the Alabama Tourism Department.

31 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

32 Section 1. This act shall be known and cited as the
33 Enhancing Economic Progress Act.

34 Section 2. Sections 40-18-370, 40-18-372, 40-18-374,
35 40-18-375, 40-18-376, 40-18-376.1, 40-18-376.2, 40-18-376.3,
36 40-18-376.4, 40-18-377, 40-18-378, 40-18-382, 40-18-383,
37 40-18-417.1, 40-18-417.2, 40-18-417.3, 40-18-417.4,
38 40-18-417.7, and 40-9B-4.1, Code of Alabama 1975, are amended
39 to read as follows:

40 "§40-18-370

41 (a) This article shall be known and may be cited as the
42 Alabama Jobs Act.

43 (b) The Legislature makes the following findings:

44 (1) The economic well-being of the citizens of the
45 state will be enhanced by the increased development and growth
46 of employment within Alabama.

47 (2) It is in the best interests of the state to provide
48 certain incentives to allow the state to foster economic
49 development through the recruitment of quality projects and
50 the expansion of existing businesses within Alabama.

51 (3) The incentives provided for in this article do not
52 raise any taxes for any individuals or businesses in Alabama
53 under state law.

54 (4) The incentives provided in this article will allow
55 the state to encourage the creation of new jobs that may not
56 otherwise exist within the State of Alabama.



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57 (5) The incentives provided in this article will
58 increase revenues for the state without increasing taxes.

59 (6) The Constitution of the State of Alabama grants the
60 Legislature the authority to approve and authorize exemptions,
61 exclusions, deductions, and credits from taxation in order to
62 define the net proceeds of any tax payable under state law.

63 (7) The Constitution of the State of Alabama was
64 framed, and the laws of the state were enacted, with the goal
65 of protecting, encouraging, and developing individual
66 enterprise.

67 (8) The incentives provided in this article will not
68 decrease the salary paid to any education personnel.

69 (9) The powers to be granted and the purposes to be
70 accomplished by this article will create an environment for
71 the recruitment of quality projects and the expansion of
72 existing businesses within Alabama.

73 (10) Economic development through tax and financial
74 incentives benefits the citizens of the state and is a public
75 purpose of the state.

76 (c) In addition to the definitions found at Section
77 40-18-1, the following words and phrases shall have the
78 following meanings:

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

82 (2) CAPITAL INVESTMENT. All costs and expenses incurred
83 by the incentivized company in connection with the
84 acquisition, construction, installation, and equipping of a



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85 qualifying project, if such costs are required to be
86 capitalized for purposes of the federal income tax, determined
87 without regard to any rule that permits expenditures properly
88 chargeable to a capital account to be treated as current
89 expenditures. However, for any project involving the
90 extraction of natural resources, the capital investment shall
91 not include the costs of acquiring land, land recording fees,
92 architectural and engineering services, environmental studies
93 and environmental mitigation.

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

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

99 ~~(5) (4) EMPLOYEES. Some or all of those persons employed~~
100 ~~and residing in Alabama~~ Persons employed in full time
101 positions created by or through a qualifying project:

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

105 b. Whom the approved company, related company, common
106 paymaster, or joint venturer ~~or leasing company~~ identifies as
107 its employees to ~~the U.S. Internal Revenue Service,~~ the
108 Department of Revenue, or the Department of Labor on returns
109 or reports filed with the foregoing, including, but not
110 limited to, ~~IRS Form 941;~~ Form A-6, Form A-1, Form A-2,
111 UC-CR-4, and UC-10-R. and

112 ~~c. Who are assigned to a qualifying project for a~~



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113 ~~period of at least one year.~~

114 ~~(6)~~ (5) INCENTIVE PERIOD. The period or periods of time
115 during which an incentiivized company can receive one or more
116 of the jobs act incentives.

117 ~~(7)~~ (6) INCENTIVIZED COMPANY. An approved company and
118 any related company that are allowed to claim one or more of
119 the jobs act incentives as provided for in the project
120 agreement.

121 ~~(8)~~ (7) INVESTMENT CREDIT. The annual incentive provided
122 in Section 40-18-376.

123 ~~(9)~~ (8) JOBS ACT INCENTIVES. The jobs credit and the
124 investment credit as authorized and provided for in this
125 article.

126 ~~(10)~~ (9) JOBS CREDIT. The annual incentive provided in
127 Section 40-18-375.

128 ~~(11)~~ (10) NAICS CODE. Any sector, subsector, industry
129 group, industry or national industry of the 2012 North
130 American Industry Classification System, or any similar
131 classification system developed in conjunction with the United
132 States Department of Commerce or Office of Management and
133 Budget.

134 ~~(12)~~ (11) PROJECT. Any land, building, or other
135 improvements, and all real and personal properties, whether or
136 not contiguous and whether or not previously in existence, if
137 in Alabama and if deemed necessary or useful in connection
138 with an activity listed in Section 40-18-372(1).

139 ~~(13)~~ (12) PROJECT AGREEMENT. The agreement entered into
140 between an approved company and the Governor establishing the



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141 terms and conditions for the provision of the jobs act
142 incentives, as provided for in Section 40-18-374.

143 ~~(14)~~ (13) QUALIFYING PROJECT. Any project to be
144 undertaken by an approved company that satisfies Section
145 40-18-372.

146 ~~(15)~~ (14) RELATED COMPANY. ~~Any company that is under~~
147 ~~common ownership, management, or control with a company or an~~
148 ~~approved company, as the case may be~~ Any entity that owns,
149 ~~owned, or is owned,~~ directly or through one or more entities,
150 a 50 percent or greater interest in the capital or profits of
151 another.

152 (15) RENEWABLE ENERGY GENERATION. Energy derived from
153 biomass, geothermal, hydrogen, hydropower, marine energy,
154 solar, or wind.

155 (16) UTILITY TAXES. The taxes imposed by Sections
156 40-21-82 and 40-21-102.

157 (17) WAGES. Total wages of an employee (including gross
158 wages, salaries, overtime and bonuses), defined by reference
159 to Section 25-4-16(b), without application of Sections
160 25-4-16(b) (1), 25-4-16(b) (2) a., 25-4-16(b) (3), and
161 25-4-16(b) (4).

162 "§40-18-372

163 A qualifying project must be found by the Secretary of
164 Commerce to conduct an activity specified in subdivision (1)
165 and to meet the minimum standard set forth in subdivision (2).

166 (1) A qualifying project must predominantly conduct an
167 activity that is any one or more of the following:

168 a. Described by NAICS Code 1133, 115111, 2121, 22111,



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169 221330, 31 (other than 311811), 32, 33, 423, 424, 482, 4862,
170 48691, 48699, 48819, 4882, 4883 (other than 48833), 493, 511,
171 5121 (other than 51213), 51221, 517, 518 (without regard to
172 the premise that data processing and related services be
173 performed in conjunction with a third party), 51913, 52232,
174 54133 (if predominantly in furtherance of another activity
175 described in this article), 54134 (if predominantly in
176 furtherance of another activity described in this article),
177 54138, 5415, 541614, 5417, 55 (if not for the production of
178 electricity), 561422 (other than establishments that originate
179 telephone calls), 562213, 56291, 56292, 611512, 927, or 92811.

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

182 c. A renewable energy generation facility that is owned
183 by one or more electric providers, as such term is defined in
184 Section 37-16-3(10), for providing electric service at retail
185 in Alabama. For purposes of this subdivision, an "electric
186 provider" shall also include an authority as defined in
187 Section 11-50A-1(1). In the case of an electric provider that
188 is also a tax-exempt organization under the Internal Revenue
189 Code, notwithstanding Section 40-18-376(b)(3), any investment
190 credit may be transferred for the entire term of the project
191 agreement, as approved by the Governor. A "renewable energy
192 generation facility" as used in this subdivision shall include
193 any tangible property that is part of renewable energy
194 generation, including any addition, modification, expansion,
195 or upgrade to transmission or distribution systems that is
196 required to accommodate the interconnection of renewable



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197 [energy generation.](#)

198 ~~e.d.~~ The conduct of original investigations undertaken
199 on a systematic basis to gain new knowledge or the application
200 of research findings or other scientific knowledge to create
201 new or significantly improved products or processes.

202 ~~d.e.~~ The national or regional headquarters for a
203 company that conducts significant business operations outside
204 the state and that will serve as the principal office of the
205 company's principal operating officer with chief
206 responsibility for the daily business operations of the
207 company.

208 ~~e. A commercial enterprise which is open to the public
209 not less than 120 days during a calendar year and is designed
210 to attract visitors from inside or outside of the State of
211 Alabama, typically for its inherent cultural value, historical
212 significance, natural or man-made beauty, or entertainment or
213 amusement opportunities, including, but not limited to, a
214 cultural or historical site, a botanical garden, a museum, a
215 wildlife park or aquarium open to the public that cares for
216 and displays a collection of animals or fish, an amusement
217 park, a convention hotel and conference center, a water park,
218 or a spectator venue or arena.~~

219 f. A target of the state's economic development efforts
220 pursuant to the Accelerate Alabama Strategic Economic
221 Development Plan adopted in January 2012 by the Alabama
222 Economic Development Alliance, created by Executive Order
223 Number 21 of the Governor on July 18, 2011, or any amended
224 version or successor document thereto.



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225 g. A type listed in a regulation adopted by the
226 Department of Commerce, other than a regulation submitted as
227 an emergency rule.

228 Notwithstanding the foregoing, a qualifying project may
229 not engage predominantly in farming activities involving
230 trees, animals, or crops, and a qualifying project may not
231 engage predominantly in the retail sale of tangible personal
232 property or services, and may not be a shopping center,
233 restaurant, movie theater, bowling alley, fitness center,
234 miniature golf course, nightclub, gaming facility, or
235 establishment serving the local community. However, if such
236 excluded activities are not the predominant activity at the
237 project, and if the project is otherwise a qualifying project,
238 then the project agreement may provide that the capital
239 investment may include costs related to excluded activities
240 that are ancillary to the primary business conducted as part
241 of the project. This provision shall not be deemed to exclude
242 customer service centers, call centers or headquarters
243 otherwise allowed by this subdivision (1).

244 (2) A qualifying project shall create a significant
245 number of new jobs for the area in which the qualifying
246 project shall be located. Absent a finding of extraordinary
247 circumstances by the Secretary of Commerce, a qualifying
248 project shall employ either of the following number of new
249 employees:

250 a. Any number of new employees, for a qualifying
251 project in which the predominant activity involves chemical
252 manufacturing, data centers, renewable energy generation,



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253 engineering, design, or research, metal/machining technology
254 or toolmaking; or

255 b. At least 50 new employees, for all other qualifying
256 projects."

257 "§40-18-374

258 (a) An incentivized company may claim either or both of
259 the jobs act incentives, to the extent provided in the project
260 agreement.

261 (b) In order for an incentivized company to claim the
262 jobs act incentives, the Governor and the incentivized company
263 shall execute a project agreement. The agreement shall contain
264 all of the following:

265 (1) The name of the incentivized company;

266 (2) The location of the qualifying project;

267 (3) The activity to be conducted at the qualifying
268 project;

269 (4) The jobs act incentives to be granted ~~and the order~~
270 ~~in which they shall be claimed;~~

271 (5) The capital investment to be made at the qualifying
272 project;

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

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

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

280 (9) The dates or conditions that shall begin the



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281 running of the incentive periods for applicable jobs act
282 incentives;

283 (10) The lengths of the incentive periods for the jobs
284 act incentives;

285 (11) Any annual or aggregate limitations on the amount
286 of either or both of the jobs act incentives that can be
287 claimed during an incentive period;

288 (12) Provisions governing the recapture of all or part
289 of the jobs act incentives awarded to the qualifying project,
290 should the approved company default on its obligations in the
291 project agreement;

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

295 (14) Any other terms, conditions, and limitations that
296 this article or the Governor may require for an incentivized
297 company to qualify for and receive a jobs act incentive; and

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

300 (c) The Governor may decrease the amounts and durations
301 of the jobs act incentives to ensure that the anticipated
302 revenues for the state will exceed the amount of tax
303 incentives sought."

304 "§40-18-375

305 (a) (1) If provided for in the project agreement and in
306 accordance with the terms therein, the incentivized company is
307 allowed a jobs credit against utility taxes, in an annual
308 amount ~~equal~~equal up to 3 percent of the wages paid to ~~eligible~~



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309 Alabama resident employees during the prior year. The
310 incentive period shall ~~be~~ not exceed 10 years.

311 (2) If the incentivized company is engaged in
312 pharmaceutical, biomedical, medical technology or medical
313 supplies manufacturing, or its related research and
314 development activities, the incentivized company is allowed a
315 jobs credit against utility taxes, in an annual amount ~~equal~~ up
316 to 4 percent of the wages paid to ~~eligible~~ Alabama resident
317 employees during the prior year. The incentive period shall
318 ~~be~~ not exceed 10 years. This applies to companies that
319 predominantly conduct an activity described by NAICS code
320 3254, 339112, or 339113, to include related research and
321 development.

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

325 (1)a. As further provided in the project agreement, the
326 ~~The~~ jobs credit may be paid to the incentivized company as a
327 refund out of utility taxes during the incentive period,
328 regardless of the amount of utility taxes actually paid by the
329 incentivized company.

330 b. For each year of the incentive period for the jobs
331 credit, the incentivized company shall submit to the
332 Department of Commerce a certification as to the wages paid to
333 ~~eligible~~ employees during the prior year. Following such
334 examination as it deems necessary, the Department of Commerce
335 may certify the information and deliver the same to the
336 Department of Revenue. Thereafter, the Department of Revenue



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337 shall calculate the correct refund and issue it directly to
338 the incentivized company.

339 (2)a. The jobs credit may be claimed as a credit
340 against utility taxes actually paid until the effective date
341 of this act, after which time the provisions of subdivision
342 (b)(1) shall control, and the offset provided in this
343 subdivision shall cease unless the provisions stated in
344 subdivision (b)(1) are explicitly stated in the project
345 agreement that was executed prior to the effective date of
346 this act. In any one year, if the credit exceeds the amount of
347 taxes that are allowed to be offset by the project agreement
348 and that are owed by the incentivized company, the
349 incentivized company may carry the credit forward, to the
350 extent allowed in the project agreement. No carryforward shall
351 be allowed for more than five years. Rules similar to those
352 used for Section 40-18-15.2 shall be applied.

353 b. Prior to claiming the jobs credit as provided in
354 this subdivision, the incentivized company shall submit to the
355 Department of Commerce a certification as to the wages paid to
356 ~~eligible~~ employees during the prior year. Following such
357 examination as it deems necessary, the Department of Commerce
358 may certify the information and deliver same to the Department
359 of Revenue. Thereafter, the Department of Revenue shall allow
360 the jobs credit.

361 (c) The realization methods in subsection (b) shall not
362 create debts of the state within the meaning of Section 213 of
363 the ~~Official Recompilation of the~~ Constitution of Alabama of
364 ~~1901, as amended~~ 2022.



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365 (d) The Department of Finance shall adopt rules to
366 ensure that the credit in no case would reduce the
367 distribution for the Alabama Special Mental Health Trust Fund
368 by using any unencumbered funds."

369 "§40-18-376

370 (a) If provided for in the project agreement, the
371 incentivized company is allowed an investment credit in an
372 annual amount ~~equal~~up to 1.5 percent of the capital investment
373 incurred as of the beginning of the incentive period, to be
374 used as follows:

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

377 (2) To offset the financial institution excise tax
378 found in Chapter 16;

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

382 (4) To offset utility taxes;

383 (5) To offset state license taxes levied by Article 2
384 of Chapter 21; or

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

387 The incentive period shall begin no earlier than the
388 placed-in-service date. The incentive period shall ~~be not~~
389 exceed 10 years. ~~Should only some portion of a tax year be~~
390 ~~included in the incentive period, the amount of the investment~~
391 ~~credit shall be prorated on a daily basis.~~

392 (b) A project agreement may specify any one or more of



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393 the following methods by which the investment credit shall be
394 realized by the incentivized company, so long as a credit is
395 not utilized more than once:

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

405 b. Prior to claiming the investment credit as provided
406 in this subdivision, the incentivized company shall submit to
407 the Department of Commerce a certification as to its capital
408 investment as of the dates specified in the project agreement.
409 Following such examination as it deems necessary, the
410 Department of Commerce may certify the information and deliver
411 the same to the Department of Revenue. Thereafter, the
412 Department of Revenue shall allow the investment credit.

413 (2) The project agreement may authorize an incentivized
414 company that is taxed as a flow-through entity to allocate the
415 credit among some or all of the owners in any manner
416 specified, regardless of whether the allocation follows rules
417 similar to 26 U.S.C. § 704(b) and the regulations thereunder.
418 The owners may then use their allocated share of the
419 investment credit to offset any of the taxes listed in
420 subsection (a), as provided in subdivision (1). This



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421 subdivision shall be liberally construed to apply to multiple
422 levels of companies, to allow the investment credits to be
423 used by those persons bearing the tax burdens of the
424 qualifying project, and such companies shall include but shall
425 in no way be limited to flow-through entities, employee stock
426 ownership plans, mutual funds, real estate investment trusts,
427 and it shall also apply to offset the income tax liability of
428 employee/owners of a flow-through entity owned by an employee
429 stock ownership plan trust.

430 (3) ~~All or part of the first three years~~ The Secretary
431 of Commerce may recommend to the Governor that the
432 incentivized company be granted transferability of the
433 investment credit ~~may be transferred by the incentivized~~
434 ~~company and applied by another person or company as follows:~~

435 ~~a. A transfer of the credit shall be made by written,~~
436 ~~notarized contract.~~

437 ~~b. No such transfer shall occur before the contract is~~
438 ~~approved by the Secretary of Commerce. In determining whether~~
439 ~~to approve any transfer, the Secretary shall make all of the~~
440 ~~following findings:~~

441 ~~(i) That any~~ for up to the first five years. Any
442 investment credit transferred shall be at the value of at
443 least 85 percent of the value of the credit. Any one year's
444 investment credit ~~will~~ shall not be purchased by more than
445 three transferees, unless such limitation is found by the
446 Secretary of Commerce to unnecessarily ~~to~~ limit the class of
447 potential transferees~~†.~~ .

448 ~~(ii) That the proposed transfer will enhance the~~



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449 ~~economic benefits of the qualifying project; and~~

450 ~~(iii) That the transfer is at a value of at least 85~~
451 ~~percent of the present value of the credits.~~

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

459 ~~e. If a transfer is approved, the incentivized company~~
460 ~~shall submit to the Department of Commerce the following:~~

461 ~~(i) Certifications as to its capital investment as of~~
462 ~~the dates specified in the project agreement. Following such~~
463 ~~examination as it deems necessary, the~~If approved by the
464 Governor, transferability shall be allowed in the project
465 agreement, subject to any notice and verification requirements
466 determined by the Department of Commerce. Prior to any
467 transfer, the investment credit shall be certified by the
468 Department of Commerce may certify the information and deliver
469 the same to the Department of Revenue pursuant to paragraph
470 (b) (1) b. of Section 40-18-376.

471 ~~(ii) Certified information about the transfers,~~
472 ~~including identifying information about the transferees and~~
473 ~~the amount of credit each transferee should claim. Following~~
474 ~~such examination as it deems necessary, the Department of~~
475 ~~Commerce may certify the information and deliver the same to~~
476 ~~the Department of Revenue.~~



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477 ~~d. Upon receipt of the certifications from the~~
478 ~~Department of Commerce as required by paragraph e., the~~The
479 Department of Revenue shall adopt a transfer statement form to
480 be filed by the transferor in a manner prescribed by the
481 Department of Revenue. The transfer statement form shall
482 include the name and federal taxpayer identification number of
483 the transferor and each transferee listed therein along with
484 the amount of the tax credit to be transferred to each
485 transferee listed on the form. The transfer statement form
486 shall also contain such other information as the Department of
487 Revenue may reasonably require. For each transfer of a credit,
488 the incentivized company shall file with the Department of
489 Revenue, and a copy to the Department of Commerce, (1) a
490 completed transfer statement form; (2) a copy of the
491 investment credit certification issued by the Department of
492 Commerce; and (3) a copy of the executed transfer agreement.
493 Filing of the executed transfer agreement with the Department
494 of Revenue shall perfect such transfer to the respect to such
495 transferee and the Department of Revenue shall thereafter
496 allow the appropriate amount of the investment credit to
497 offset the tax liability of the transferee for any of the
498 taxes listed in subsection (a) and, for any project agreements
499 entered into after January 1, 2021 only, state license taxes
500 levied by Article 2 of Chapter 21. In any one year, if the
501 investment credit exceeds the amount of taxes that are allowed
502 to be offset and that are owed by the transferee, the
503 transferee may carry the credit forward for five years. A
504 transferee may not make a subsequent transfer of the credit.



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505 The Department of Revenue may adopt rules necessary to
506 implement and administer the transfer provisions as provided
507 in this act.

508 e.—If a credit is transferred, an incentivized company
509 that is later determined by the Secretary of Commerce to have
510 defaulted under the project agreement shall be liable for the
511 underpayment of tax attributable to the credit and for
512 penalties and interest thereon. Unless the purchase of the
513 credits is determined to have been made in a fraudulent
514 manner, or is a transfer in anticipation of bankruptcy,
515 insolvency, or closure, a transferee shall not be liable for
516 the unpaid tax attributable to the credit, or for penalties or
517 interest thereon.

518 (c) The realization methods in subsection (b) shall not
519 create debts of the state within the meaning of Section 213 of
520 the ~~Official Recompilation of the Constitution of Alabama of~~
521 ~~1901, as amended~~2022.

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

529 (2) To the extent the investment credit is used to
530 offset an insurance premium tax liability, the Department of
531 Finance shall adopt rules to ensure that the credit would in
532 no case reduce the distributions to the Alabama Special Mental



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533 Health Trust Fund by using any unencumbered funds.

534 (3) To the extent the investment credit is used to
535 offset liability for the tax imposed by Section 40-21-82 or
536 Article 2 of Chapter 21, the Department of Finance shall adopt
537 rules to ensure that the credit in no case would reduce the
538 distribution for the Alabama Special Mental Health Trust Fund
539 by using any unencumbered funds."

540 "§40-18-376.1

541 (a) As used in this section, the following terms ~~shall~~
542 have the following meanings:

543 (1) JUMP START COUNTY. Any Alabama county which meets
544 all the following:

545 a. That does not qualify as a targeted county.

546 b. That has experienced negative population growth over
547 the last five years as determined by the Commissioner of Labor
548 as of each January 1 using the most current data available
549 from the United States Departments of Labor or Commerce, the
550 United States Bureau of the Census, or any other federal or
551 state agency or department.

552 c. Contains no more than two opportunity zones as they
553 existed on June 1, 2019.

554 (2) TARGETED COUNTY. Any Alabama county that has a
555 population of ~~50,000~~60,000 or less, as determined by the
556 Commissioner of Labor as of each January 1 using the most
557 current data available from the United States Departments of
558 Labor or Commerce, the United States Bureau of the Census, or
559 any other federal or state agency or department.

560 (b) In making the findings required by Section



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561 40-18-373(a), a company that proposes a qualifying project in
562 a targeted or jumpstart county shall be an approved company
563 for purposes of this section only if the Secretary of Commerce
564 makes the additional finding that the qualifying project will
565 increase the economic diversity of, or otherwise benefit, the
566 targeted or jumpstart county.

567 (c) For purposes of determining in Section
568 40-18-372(2)b. whether a qualifying project may receive the
569 jobs act incentives, a project to be located in a targeted or
570 jumpstart county shall employ at least ten new employees and
571 shall involve, directly or indirectly, at least two million
572 dollars (\$2,000,000) of capital, absent a finding of
573 extraordinary circumstances by the Secretary of Commerce.

574 (d) If the qualifying project is located in a county
575 which is deemed to be a targeted or jumpstart county on the
576 date the project agreement is executed, the following shall be
577 applicable:

578 (1) The jobs credit provided in Section 40-18-375(a)
579 shall be up to 4.0 percent of the wages paid to
580 ~~eligible~~ Alabama resident employees during the prior year; and

581 (2) The investment credit provided in Section
582 40-18-376(a) shall have an incentive period ~~of~~ not to exceed
583 15 years.

584 (e) Each year, the incentives in subsection (d) may be
585 extended to no more than two qualifying projects not in
586 targeted or jumpstart counties. Such incentives shall be
587 granted in project agreements executed by the Governor on the
588 recommendation of the Secretary of Commerce."



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589 "§40-18-376.2

590 (a) The provisions in this section shall apply to the
591 following:

592 (1) Any incentivized company that employed, in the
593 prior year, at least 12 percent of its ~~eligible~~ employees as
594 veterans who received an honorable or general discharge. ~~The~~
595 ~~calculation of the percentage of eligible employees who are~~
596 ~~veterans shall be made using the method provided in a project~~
597 ~~agreement.~~

598 (2) Any incentivized company ~~that employed eligible~~
599 ~~employees by or through~~with a qualifying project located
600 within a former active duty military installation closed by
601 the Base Realignment and Closure process.

602 (b) (1) Any incentivized company described by
603 subdivision (1) of subsection (a) shall receive an additional
604 0.5 percent jobs credit provided in Section 40-18-375(a) on
605 the wages paid during the prior year to ~~eligible~~ Alabama
606 resident employees who are veterans.

607 (2) Any incentivized company described by subdivision
608 (2) of subsection (a) shall receive an additional 0.5 percent
609 jobs credit provided in Section 40-18-375(a) on the wages paid
610 during the prior year to ~~its eligible~~ Alabama resident
611 employees.

612 (c) No incentivized company claiming the credit
613 provided by subdivision (1) of subsection (b) shall also claim
614 the credit provided by Article 13 of this chapter for any
615 portion of the project.

616 (d) The Department of Labor shall periodically verify



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617 the actual number of veterans employed by the incentivized
618 company described in subdivision (1) of subsection (a) and the
619 wages of the veterans during the relevant year. If the
620 Department of Labor is not able to provide the verification
621 utilizing all available resources, it may request any
622 additional information from the incentivized company as may be
623 necessary."

624 "§40-18-376.3

625 (a) (1) This section shall be applicable to a technology
626 company so long as there is a project agreement which provides
627 that Alabama is or will become the company's headquarters, the
628 place of residence of its top three executives, and the place
629 of residence of at least 75 percent of its employees.

630 (2) In making the findings required by Section
631 40-18-373(1), a technology company that proposes a qualifying
632 project shall be an approved company for purposes of this
633 section only if the Secretary of Commerce makes the additional
634 finding that the qualifying project will increase the economic
635 diversity of, or otherwise benefit, the state.

636 (3) A qualifying project shall be deemed to be in
637 existence, notwithstanding the requirements of Section
638 40-18-372, so long as at least 10 new employees are employed
639 at the qualifying project, absent a finding of extraordinary
640 circumstances by the Secretary of Commerce.

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

644 (1) A jobs credit against utility taxes~~7~~ in an annual



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645 amount ~~equal up~~ to 4 percent of the wages paid to
646 ~~eligible~~ Alabama resident employees during the prior year. The
647 incentive period shall ~~be~~ not exceed 10 years.

648 (2) An investment credit as provided in Section
649 40-18-376.

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

652 (1) A company that earns at least 75 percent of its
653 revenues from either of the following:

654 a. Activities within subsector 518; industry group
655 5112, 5121 (other than 51213), 5415, or 5417; or industry
656 51913 of the 2012 North American Industry Classification
657 System, or any similar classification system developed in
658 conjunction with the United States Department of Commerce or
659 Office of Management and Budget.

660 b. The use of technology to develop new coding or
661 processes for the creation or delivery of goods or services in
662 the following fields, or any additional activities determined
663 by the Secretary of Commerce to be beneficial to the
664 enhancement of businesses rooted in either of the following
665 fields:

666 1. Any of the fields of education, healthcare, energy,
667 agriculture, infrastructure, software, robotics, nutrition,
668 aerospace, automotive, or financial services.

669 2. Any fields related to science, technology,
670 engineering, or mathematics.

671 (2) A company that, for a fixed term, educates and
672 mentors early-stage technology companies recruited to a



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673 location in Alabama, with the goal of accelerating the
674 companies' development and growth."

675 "§40-18-376.4

676 (a) This section shall be applicable to an
677 underrepresented company, as defined in this section. In
678 making the findings required by Section 40-18-373(1), an
679 underrepresented company that proposes a qualifying project
680 shall be an approved company for purposes of this section only
681 if the Secretary of Commerce makes the additional finding that
682 the qualifying project will increase economic diversity and
683 will benefit the state.

684 (b) If provided for in the project agreement, the
685 following shall be allowed to any company which meets all of
686 the criteria in subsection (a):

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

691 (2) A jobs credit against utility taxes, in an annual
692 amount ~~equal~~ up to 4 percent of the wages paid to
693 ~~eligible~~ Alabama resident employees during the prior year.

694 (3) The investment credit provided in Section
695 40-18-376(a) shall have an incentive period ~~of~~ not to exceed
696 15 years.

697 (c) An "underrepresented company" is any company which
698 meets all the criteria in the following subdivision (1) or
699 (2):

700 (1) The company is a for-profit business headquartered



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701 in a community eligible for investment through the federal New
702 Markets Tax Credit program under 26 U.S.C. § 45D(e), has fewer
703 than 10 employees at the time the project agreement is
704 executed, and has average gross revenues of less than five
705 hundred thousand dollars (\$500,000) in the company's three
706 years prior to the execution of the project agreement; or

707 (2) The company is a for-profit business that is
708 independently owned and controlled and is at least 51 percent
709 owned and controlled by one or more underrepresented persons
710 or, in the case of a publicly-owned business, the company is a
711 for-profit business of which at least 51 percent of the stock
712 is owned and controlled by one or more underrepresented
713 persons and whose daily management and operations are under
714 the control of one or more underrepresented persons. As used
715 herein, an underrepresented person is a United States citizen
716 who is a woman or is African American."

717 "§40-18-377

718 (a) After its execution, the Department of Commerce
719 shall forward to the Department of Revenue a copy of any
720 project agreement that allows an incentivized company to claim
721 a jobs act incentive.

722 (b) Jobs act incentives shall not be considered
723 securities under Section 8-6-2(10).

724 (c) The acceptance of a tax credit under this article
725 shall constitute approval and written consent by the taxpayer
726 to disclose to the Secretary of Commerce the total tax
727 liability, net operating loss, amount of credit claimed,
728 recipient of the credit, and any transferor and transferee



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729 information. The Department of Revenue shall disclose such
730 information to the Department of Commerce upon written request
731 by the Secretary of Commerce. The information shall be limited
732 to what is necessary to administer the provisions of this
733 article. Upon receipt of this information, the provisions of
734 Section 40-2A-10 shall apply to the Department of Commerce and
735 its employees with respect to the use, dissemination, or other
736 handling of the information."

737 "§40-18-378

738 (a) The Department of Labor shall periodically verify
739 the actual number of ~~eligible~~ employees employed at the
740 qualifying project and the wages of the ~~eligible~~ employees
741 during the relevant year. If the Department of Labor is not
742 able to provide the verification utilizing all available
743 resources, it may request any additional information from the
744 incentivized company as may be necessary. The Department of
745 Revenue may periodically audit any incentivized company to
746 monitor compliance by the incentivized company with this
747 article. Nothing in this article shall be construed to limit
748 the powers otherwise existing for the Department of Revenue to
749 audit and assess an incentivized company. The Department of
750 Insurance shall have similar audit rights over any
751 incentivized company that is subject to the insurance premium
752 tax.

753 (b) The project agreement shall include provisions for
754 the incentivized company to return any unearned credit
755 amounts.

756 (c) (1) An incentivized company shall be liable for any



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757 unearned portion of the jobs credit or investment credit it
758 claims or transfers pursuant to this article. The jobs credit
759 will be considered unearned when the incentivized company
760 fails to pay the full amount of wages or create the full
761 number of jobs upon which the credit was based and claimed.
762 The investment credit will be considered unearned when the
763 incentivized company fails to make the full capital investment
764 upon which the credit was based and claimed or upon which the
765 credit was valued and then transferred. The incentivized
766 company shall be liable for only that portion of the jobs
767 credit or investment credit that was unearned. Any credit
768 claimed by an owner of an incentivized company is deemed to
769 have been claimed by the incentivized company for purposes of
770 this subsection.

771 (2) The Secretary of Commerce may report to the
772 Department of Revenue any failure of an incentivized company
773 to meet the jobs, wage, or investment requirements specified
774 in the project agreement. The report will be made by March 31
775 of the year following the calendar year in which the failure
776 occurs and shall contain sufficient information for the
777 Department of Revenue to calculate the unearned portion of the
778 jobs credit or investment credit. The underpayment of the
779 applicable tax will be deemed to have occurred upon the filing
780 of the report. The report shall be treated as the filing of a
781 return by the incentivized company for purposes of any
782 applicable period of limitation.

783 (3) The Department of Revenue may assess an
784 incentivized company for any unearned portion of the



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785 investment credit or jobs credit, with allowed interest and
786 penalties, pursuant to the terms of Chapter 2A or 29. The
787 liability shall be considered an underpayment of the tax
788 against which the respective credit was applied or refunded.

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

793 (d) Notwithstanding the provisions of subsection (c),
794 no credit authorized under this article shall be approved and
795 issued prior to the credit being earned."

796 "§40-18-382

797 The incentives authorized by this article shall not be
798 available for qualifying projects for which project agreements
799 have not been executed on or prior to July 31, ~~2023~~2028,
800 unless the Legislature enacts legislation to continue or
801 reinstate the incentives for new projects after that date. No
802 action or inaction on the part of the Legislature shall reduce
803 or suspend any incentive awarded pursuant to this article in
804 any past or future calendar year with respect to qualifying
805 projects for which project agreements have been executed on or
806 prior to July 31, ~~2023~~2028, it being the sole intention of
807 this section that failure of the Legislature to enact
808 legislation continuing the incentives authorized by this
809 article for periods after July 31, ~~2023~~2028, shall affect only
810 the availability of the incentives to qualifying projects for
811 which project agreements have not been executed on or prior to
812 July 31, ~~2023~~2028, and shall not affect qualifying projects



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813 for which project agreements have been executed on or prior to
814 July 31, ~~2023~~2028."

815 "§40-18-383

816 (a) At no time prior to the calendar year ending
817 ~~December 31, 2020, shall the annualized balance of outstanding~~
818 ~~jobs act incentives exceed \$300 million, which amount would~~
819 ~~increase to three hundred twenty-five million dollars~~
820 ~~(\$325,000,000) for the calendar year ending December 31, 2021~~
821 ~~and, shall the annualized balance of the outstanding jobs act~~
822 ~~incentives exceed three hundred fifty million dollars~~
823 ~~(\$350,000,000) for the calendar year ending December 31, 2022,~~
824 ~~which amount would increase to three hundred seventy-five~~
825 ~~million dollars (\$375,000,000) for the calendar year ending~~
826 ~~December 31, 2023, four hundred million dollars (\$400,000,000)~~
827 ~~for the calendar year ending December 31, 2024, four hundred~~
828 ~~twenty-five million dollars (\$425,000,000) for the calendar~~
829 ~~year ending December 31, 2025, four hundred fifty million~~
830 ~~dollars (\$450,000,000) for the calendar year ending December~~
831 ~~31, 2026, and four hundred seventy-five million dollars~~
832 ~~(\$475,000,000) for the calendar year ending December 31, 2027,~~
833 unless the Legislature enacts legislation to allow additional
834 jobs act incentives. Of the above annualized balance, twenty
835 million dollars (\$20,000,000) shall apply to qualifying
836 projects located in targeted or jumpstart counties as
837 described in Section 40-18-376.1.

838 ~~(b) Jobs act incentives shall not be available to any~~
839 ~~project for which substantial construction activities have~~
840 ~~begun by July 2, 2015.~~



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841 ~~(e)~~ (b) Jobs act incentives under this article shall not
842 be available for any qualifying project unless at least 80
843 percent of the ~~eligible~~ employees created by the qualifying
844 project are employed full time."

845 "§40-18-417.1

846 For the purposes of the Growing Alabama Act pursuant to
847 this article, the following words and phrases shall have the
848 following meanings:

849 ~~(1) ACCELERATOR. A company that, for a fixed term,~~
850 ~~educates and mentors early-stage technology companies~~
851 ~~recruited to a location in Alabama, with the goal of~~
852 ~~accelerating the companies' development and growth.~~

853 ~~(2)~~ (1) CAPITAL IMPROVEMENTS. Construction and
854 rehabilitation expenses of a capital nature at an inland port
855 or intermodal facility, the dredging of waterways in the
856 immediate vicinity of an inland port, and the expansion of
857 onsite storage facilities at an inland port or intermodal
858 facility.

859 ~~(3)~~ (2) ECONOMIC DEVELOPMENT ACTIVITIES. Activities and
860 initiatives that enhance the use of, and flow of goods
861 through, an inland port or intermodal facility.

862 ~~(4)~~ (3) ECONOMIC DEVELOPMENT ORGANIZATION. A local
863 economic development organization or a state economic
864 development organization.

865 ~~(5)~~ (4) GROWING ALABAMA CREDIT. The credit provided for
866 in subsection (a) of Section 40-18-417.4.

867 ~~(6)~~ (5) INDUSTRY or BUSINESS. An entity that would
868 conduct at a site an activity that is primarily described in



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869 Section 40-18-372(1).

870 ~~(7)~~(6) INLAND PORT. Any port on a navigable river away
871 from traditional land, air, and coastal borders.

872 ~~(8)~~(7) INTERMODAL FACILITY. Any facility that
873 interconnects two or more different modes of air, rail, or
874 road traffic serving multiple customers, and which involves
875 storage facilities.

876 ~~(9)~~(8) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION.

877 Organizations which are determined by the Department of
878 Commerce to meet both of the following criteria:

879 a. The organization is an Alabama entity not operating
880 for profit, including, but not limited to, a municipality or
881 county, an industrial board or authority, a chamber of
882 commerce, or some other foundation or Alabama nonprofit
883 corporation charged with improving a community or region of
884 the state.

885 b. The organization has a record of supporting or
886 otherwise participating in economic development in some part
887 of this state.

888 ~~(10)~~(9) RENEWAL OF ALABAMA COMMISSION. The Renewal of
889 Alabama Commission created by Section 40-18-402.

890 ~~(11)~~(10) SITE. Real property owned by a local economic
891 development organization and intended for use by an industry
892 or business.

893 ~~(12)~~(11) STATE ECONOMIC DEVELOPMENT ORGANIZATION. An
894 organization that is determined by the Department of Commerce
895 to be an Alabama entity not operating for profit which is
896 charged with improving the state or a region of the state and



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897 has a record of supporting or otherwise participating in
898 economic development in the state."

899 "§40-18-417.2

900 (a) (1) A local economic development organization which
901 owns a site may apply to the Department of Commerce for
902 funding to solve an inadequacy involving the site. The
903 application by the local economic development organization
904 shall include at least one of the following:

905 a. If there is a pending expression of interest about
906 the site from an industry or business, a list of the site
907 preparation or public infrastructure work needed to make the
908 site acceptable to the industry or business.

909 b. If the site has been offered to one or more
910 industries or businesses but the offer did not result in the
911 industry or business locating on the site, a list of the site
912 preparation or public infrastructure work which, if it had
913 been completed, would have made the site acceptable to the
914 industries or businesses.

915 c. If the site is an industrial or research park which
916 needs connections to interstates, highways, roadways, rail
917 systems, or sewer, fiber, electrical, gas, or water
918 infrastructure, a list of the site preparation or public
919 infrastructure work needed.

920 d. Capital improvements or economic development
921 activities at an inland port or intermodal facility, as
922 described in Section 40-18-417.1; provided that the
923 application is accompanied by an economic impact report on
924 such improvements or activities.



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925 e. Any site improvement or public infrastructure work
926 in census tracts that meets the definition of low-income
927 communities pursuant to 26 U.S.C. § 45D(e).

928 (2) An economic development organization may apply to
929 the Department of Commerce for funding to undertake ~~any of the~~
930 ~~following issues:~~

931 ~~a. The creation, operation, or support of an~~
932 ~~accelerator for technology companies, provided that the~~
933 ~~application is accompanied by an economic impact report.~~
934 ~~Technology companies shall include companies which earn or~~
935 ~~reasonably expect to earn at least 75 percent of their~~
936 ~~revenues from sources described in Section 40-18-376.3(c)(1).~~

937 ~~b. The~~the construction, maintenance, promotion,
938 operation, management, leasing, and subleasing of an
939 agricultural center which includes a multi-use facility and
940 related commercial and noncommercial structures for livestock,
941 equestrian, small animal shows and events, spectator events,
942 trade shows, educational conferences, agricultural and
943 agricultural related industries, educational, demonstrational
944 or training purposes, educational and training conferences or
945 events, recreational vehicle rallies, recreational vehicle
946 multi-day parking, hosting of corporate and non-corporate
947 organization meetings, use as fair grounds, operation of
948 retail activities, and other events and facilities expected to
949 draw participants and spectators from states located across
950 the southeastern United States, with a projected total annual
951 economic impact upon completion of all phases of the
952 agricultural center of at least thirty-five million dollars



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953 (\$35,000,000) and with the related and supporting
954 infrastructure and facilities having a projected capital
955 expenditure upon completion of all phases of the agricultural
956 center of at least one hundred million dollars (\$100,000,000);
957 provided that the application is accompanied by an economic
958 impact report on the agricultural center.

959 ~~e. The creation, operation, or support of programs~~
960 ~~designed to provide funding or other resources for businesses~~
961 ~~that are described in Section 40-18-376.4(c).~~

962 (b) ~~For any site preparation or public infrastructure~~
963 ~~work provided in subdivision (a)(1), the~~The application shall
964 include quotes for the completion of the work, following
965 compliance with the procedures set forth by the Department of
966 Economic and Community Affairs, as if the organization were
967 disbursing state funds received from the department.

968 (c) The application provided in paragraph (a)(1) a. or
969 b. shall include an estimate of the number of jobs, wages, and
970 capital investment which would have been undertaken by the
971 industries or businesses referred to in paragraph (a)(1) a. or
972 b.

973 (d) The application provided in subsection (a) shall
974 include proof that the economic development organization has
975 in full force and effect a conflict of interest policy
976 consistent with that found in the instructions to Form 1023
977 issued by the Internal Revenue Service.

978 (e) The application provided in subsection (a) shall
979 include a notarized affirmation by an officer of the economic
980 development organization that the submission of the



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981 application did not violate the conflict of interest policy
982 referred to in subsection (d)."

983 "§40-18-417.3

984 (a) Following a review, if the Department of Commerce
985 should approve the application provided in subsection (a) of
986 Section 40-18-417.2, it shall forward the application to the
987 Renewal of Alabama Commission.

988 (b) The Renewal of Alabama Commission shall consider
989 the application and shall approve it if the commission deems
990 it worthy of approval. As to improvements at industrial sites,
991 the commission shall give preference to sites with at least
992 1,000 acres of available space. As to applications for
993 projects located in communities which have the potential to
994 provide additional funding separate from the Growing Alabama
995 Credits, the commission shall take into consideration whether
996 the separate funding is to be provided to the project that is
997 the subject of the application. Meetings of the commission are
998 subject to Chapter 25A of Title 36. Notwithstanding the
999 foregoing, the commission may meet by telephone or some other
1000 telecommunications device so long as members of the public are
1001 allowed the opportunity to listen to or otherwise observe the
1002 commission's deliberations.

1003 (c) The approval of an application by the commission
1004 shall specify the amount of money which the economic
1005 development organization is allowed to receive so that it can
1006 complete the work specified in the application.

1007 (d) Following approval by the commission, the
1008 Department of Commerce shall enter into an agreement with the



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1009 economic development organization which shall do all of the
1010 following:

1011 (1) Require the economic development organization to
1012 use funding received as a result of this law only for the
1013 purposes approved by the commission as expressed in the
1014 agreement.

1015 (2) Require the economic development organization to
1016 make periodic reports, not more often than annually, to the
1017 Department of Commerce and the commission, as required by the
1018 commission, on the disposition of the funds. As to a project
1019 described in subdivision (a)(1) of Section 40-18-417.2, the
1020 report shall include information on the marketing of the site,
1021 and the ultimate use of the site until such time as it makes a
1022 final report. As to a project related to inland ports or
1023 intermodal facilities as described in paragraph (a)(1) d. of
1024 Section 40-18-417.2 or a project related to ~~a technology~~
1025 ~~company or an~~ agricultural center as described in subdivision
1026 (a)(2) of Section 40-18-417.2, the report shall include an
1027 economic impact report.

1028 (3) Require the economic development organization to
1029 provide a review of its financial accounts as directed by the
1030 Renewal of Alabama Commission.

1031 (e) For any approved applications, the Department of
1032 Commerce shall notify the Department of Revenue of the
1033 information specified in subsection (c).

1034 (f) The Department of Commerce shall publish on its
1035 website a list of all approved applications and a list of the
1036 economic development organizations that made the approved



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1037 applications."

1038 "§40-18-417.4

1039 (a) A taxpayer is allowed a Growing Alabama Credit to
1040 be applied against all of the following:

1041 (1) To offset the income taxes levied in this chapter,
1042 or as an estimated tax payment of income taxes.

1043 (2) To offset the state portion of the financial
1044 institution excise tax levied in Chapter 16.

1045 (3) To offset the insurance premium tax levied by
1046 subsection (a) of Section 27-4A-3.

1047 (4) To offset state license taxes levied by Article 2
1048 of Chapter 21.

1049 (b) In no event shall the Growing Alabama Credit cause
1050 a taxpayer's tax liability to be reduced by more than 50
1051 percent. Unused credits may be carried forward for no more
1052 than five years.

1053 (c) Growing Alabama Credits shall be granted to
1054 taxpayers using an online system administered by the
1055 Department of Revenue. The online system shall allow taxpayers
1056 to agree to make a cash contribution to an economic
1057 development organization which was approved by the Renewal of
1058 Alabama Commission, as provided in Section 40-18-417.3. The
1059 online system shall ensure that credits are not granted for
1060 contributions to an economic development organization in
1061 excess of the amounts approved by the Renewal of Alabama
1062 Commission, as provided in Section 40-18-417.3.

1063 (d) The cumulative amount of funding approved pursuant to this
1064 section shall not exceed twenty million dollars (\$20,000,000)



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1065 in a calendar year for calendar years ending prior to January
1066 1, 2023, and thirty-five million dollars (\$35,000,000) in a
1067 calendar year for calendar years beginning January 1, 2023. Of
1068 that amount, no more than four million dollars (\$4,000,000) of
1069 funding in the aggregate may be approved for accelerator
1070 programs as described in Section 40-18-376.3 (c) (2).
1071 prior to January 1, 2024, which amount would increase to
1072 twenty-three million dollars (\$23,000,000) for the calendar
1073 year ending December 31, 2024, twenty-six million dollars
1074 (\$26,000,000) for the calendar year ending December 31, 2025,
1075 twenty-nine million dollars (\$29,000,000) for the calendar year
1076 ending December 31, 2026, thirty-two million dollars
1077 (\$32,000,000) for the calendar year ending December 31, 2027,
1078 and thirty-five million dollars (\$35,000,000) for calendar
1079 year ending January 1, 2028.

1080 (e) The Renewal of Alabama Commission shall reserve at
1081 least 25 percent of the amounts specified in subsection (d)
1082 for projects located in targeted or jumpstart counties as
1083 defined in Section 40-18-376.1. In the event applications are
1084 not received and credits are not allocated for projects in
1085 these areas by the close of the second quarter of the program
1086 year, the funds may revert for allocations of other project
1087 applications.

1088 (f) To the extent that a Growing Alabama Credit is used
1089 by a taxpayer, the taxpayer shall not be allowed any deduction
1090 that would have otherwise been allowed for the taxpayer's
1091 contribution. Credits may only be claimed by the donating
1092 taxpayer and may not be assigned or transferred to any other



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1093 taxpayer. For purposes of this section, a donating taxpayer
1094 includes a taxpayer who is a shareholder of an Alabama S
1095 corporation or a partner or member of a subchapter K entity
1096 that made a contribution to an economic development
1097 organization which was approved by the Renewal of Alabama
1098 Commission.

1099 (g) The Department of Finance shall adopt rules to
1100 ensure that the Growing Alabama Credit in no case would reduce
1101 the distribution for the Alabama Special Mental Health Trust
1102 Fund by using any unencumbered funds."

1103 "§40-18-417.7

1104 The Growing Alabama Credits provided in this article
1105 shall not be available for qualifying applicants as described
1106 in this article, for which applications are not approved on or
1107 prior to July 31, ~~2023~~2028, unless the Legislature enacts
1108 legislation to extend the date. This shall only affect the
1109 availability of credits for applications not approved on or
1110 prior to July 31, ~~2023~~2028, and shall not cause a reduction or
1111 suspension of any credits awarded on or prior to July 31,
1112 ~~2023~~2028."

1113 "§40-9B-4.1

1114 In no event shall any incentive provided in Act
1115 2012-210 be available to any company filing an application
1116 after July 31, 2028~~December 31, 2023~~, unless Act 2012-210 is
1117 ~~reauthorized pursuant to legislation in that year and once~~
1118 ~~every five years succeeding the 2024 reauthorization~~. Any
1119 project granted an incentive prior to July 31, 2028~~December~~
1120 ~~31, 2023~~, shall be entitled to ~~those incentives~~the incentive



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1121 pursuant to the project agreement regardless of whether Act
1122 2012-210 is reauthorized."

1123 Section 3. In no event does this act authorize any
1124 electric provider to provide retail electric service outside
1125 of its electric service territory as determined under the
1126 applicable provisions of Chapter 14 of Title 37, Code of
1127 Alabama 1975. Nothing in this act is intended to amend,
1128 repeal, enlarge, or otherwise affect Chapter 14 of Title 37,
1129 Code of Alabama 1975.

1130 Section 4. Section 5 of this act shall be known and may
1131 be cited as the Sweet Home Alabama Tourism Investment Act.

1132 Section 5. A new Article 23 of Chapter 18 of Title 40,
1133 Code of Alabama 1975, is created to read as follows:

1134 §40-18-470

1135 For purposes of this act, the following words and
1136 phrases have the following meanings:

1137 (1) APPLICANT. Any corporation, limited liability
1138 company, partnership, sole proprietorship, business trust, or
1139 other legal entity authorized to do business in the State of
1140 Alabama.

1141 (2) APPROVED COMPANY. Any company approved for tax
1142 rebates for operating a certified tourism destination project.

1143 (3) APPROVED COSTS. Costs relating to the following:

1144 a. Land acquisition.

1145 b. Construction.

1146 c. Engineering.

1147 d. Design.

1148 e. Costs of contract bonds and insurances.



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1149 f. Installation of utilities paid by the applicant,
1150 including project-specific off-site extensions.

1151 (4) BOARD. Alabama Tourism Advisory Board established
1152 pursuant to Section 41-7-3.

1153 (5) CAPITAL INVESTMENT. All costs and expenses incurred
1154 by the incentivized company in connection with the
1155 acquisition, construction, installation, and equipping of a
1156 qualifying project, if such costs are required to be
1157 capitalized for purposes of the federal income tax, determined
1158 without regard to any rule that permits expenditures properly
1159 chargeable to a capital account to be treated as current
1160 expenditures. However, any project involving the extraction of
1161 natural resources shall not be included as a capital
1162 investment expenditure.

1163 (6) CERTIFIED TOURISM DESTINATION PROJECT.

1164 a. A certified tourism destination project must conduct
1165 an activity specified in subparagraphs 1. through 8.

1166 1. A qualifying project that has seventy-five million
1167 dollars (\$75,000,000) of capital investments may be considered
1168 a mega project.

1169 2. A qualifying project may be a tourist destination
1170 attraction with a minimum private investment of not less than
1171 fifty million dollars (\$50,000,000).

1172 3. A qualifying project may be a tourism attraction
1173 with a minimum private investment of thirty-five million
1174 dollars (\$35,000,000) located within an entertainment
1175 district. The attraction must be open to the public at least
1176 five days per week, serve food and beverages, and provide live



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1177 entertainment at least three nights per week.

1178 4. A qualifying project may be a resort development
1179 with a minimum investment of thirty-five million dollars
1180 (\$35,000,000) and consists of a hotel with a minimum of 200
1181 guest rooms. The development must also include guest amenities
1182 such as restaurants, golf courses, spas, entertainment
1183 activities, and other amenities.

1184 5. A qualifying project may be a tourism destination
1185 attraction with a minimum investment of thirty-five million
1186 dollars (\$35,000,000) located within a historic district where
1187 the district is listed in the National Register of Historic
1188 Places.

1189 6. Retail related to a qualifying project must consist
1190 primarily of upscale brands or their equivalent. Retail
1191 activities not eligible for a rebate include the following:

1192 A. Department stores.

1193 B. Convenience stores.

1194 C. Grocery stores.

1195 D. Liquor and tobacco Stores.

1196 E. Discount stores.

1197 F. Multiplex theaters.

1198 G. Facilities that perform cleaning, repair, or
1199 alteration services.

1200 H. Facilities that perform personal salon services such
1201 as tanning, nail, and beauty.

1202 7. A qualifying project may be any combination of
1203 qualifying tourist attractions, hotels, marinas, and resorts
1204 with a minimum private investment of thirty-five million



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1205 dollars (\$35,000,000) in land, buildings, architecture,
1206 engineering, fixtures, equipment, furnishings, amenities, and
1207 other related approved soft costs.

1208 b. Projects that cannot be certified as an eligible
1209 certified tourism destination project include the following:

1210 1. Expansions of any existing projects previously
1211 approved that are not equal to the lesser of 75 percent of the
1212 original capital investment or thirty-five million dollars
1213 (\$35,000,000).

1214 2. Facilities that are primarily developed for retail
1215 sales that are not certified as a resort development. Pro
1216 shops, souvenir shops, gift shops, concessions, and similar
1217 retail activities may not be included within the definition of
1218 a tourism destination project.

1219 (7) DEPARTMENT. The Alabama Tourism Department.

1220 (8) PROJECT. Any land, building, or other improvement,
1221 and all real and personal property, whether or not contiguous
1222 and whether or not previously in existence, if in Alabama and
1223 if deemed necessary or useful in connection with certified
1224 destination projects.

1225 (9) QUALIFYING PROJECT. Any project to be undertaken by
1226 an approved company that is deemed a certified tourism
1227 destination project.

1228 (10) TOURISM DESTINATION ATTRACTION. Tourist
1229 attractions that qualify include the following:

1230 a. Theme parks.

1231 b. Water parks.

1232 c. Entertainment parks or outdoor adventure parks.



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1233 d. Cultural or historical interpretive educational
1234 centers or museums.

1235 e. Motor speedways.

1236 f. Indoor or outdoor entertainment centers or
1237 complexes.

1238 g. Convention centers.

1239 h. Professional sports facilities.

1240 i. Attractions created around a natural phenomenon or
1241 scenic landscape.

1242 j. Waterfront marina facilities, including, but not
1243 limited to, indoor marine vessel storage, restaurants, and
1244 marine sales and service.

1245 k. Aquariums.

1246 §40-18-471

1247 (a) Prior to the allowance of a tax rebate on
1248 transactional taxes, an application shall be filed with the
1249 department in the manner established by the department.

1250 (b) The department shall adopt standards to be used by
1251 the Alabama Tourism Advisory Board for the review and approval
1252 of certified tourism destination projects for which a tax
1253 rebate for transactional taxes is sought pursuant to Section
1254 40-18-473.

1255 (c) The department shall establish deadlines for
1256 applications. Applications shall solicit whatever information
1257 the department deems important to its determination of
1258 authorizing a tax rebate.

1259 §40-18-472

1260 (a) In order for an applicant to be an approved



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1261 company, all of the following shall occur:

1262 (1) For any applicant that proposes a certified tourism
1263 destination project, the board shall make all of the following
1264 findings:

1265 a. That the project is in fact a certified tourism
1266 destination project.

1267 b. That the amount of tourism rebates sought are
1268 exceeded by anticipated revenues for the state, including
1269 income, property, business privilege, utility, gross receipts,
1270 sales, and use tax revenues that are generated by the economic
1271 activity resulting from the project.

1272 (b) The Alabama Tourism Advisory Board shall review
1273 qualifying projects meeting the criteria established pursuant
1274 to Section 40-18-473 and approve eligible projects for tax
1275 rebates. Upon a determination that all program requirements
1276 are met, the board will issue the Alabama Tourism Advisory
1277 Board Act Certificate. Each certificate shall include the
1278 amount of the approved project costs, the maximum rebate
1279 available, and the rebate term of 10 years with a five-year
1280 carry forward from the completion date or the date on or which
1281 five million dollars (\$5,000,000) of the approved project
1282 costs has been rebated to the applicant, whichever threshold
1283 is met first.

1284 §40-18-473

1285 (a) A tax rebate from taxes generated within the
1286 tourism destination attraction by the certified tourism
1287 destination project over a 10-year period from the
1288 commencement of operation in the amount of up to five million



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1289 dollars (\$5,000,000) may be claimed. No approved company may
1290 receive more than one million dollars (\$1,000,000) in tourism
1291 rebates in a calendar year.

1292 (b) Tax rebates may carry forward for five years.

1293 (c) (1) The tax rebates authorized by this act are
1294 limited to an aggregate amount for all certified tourism
1295 destination projects of ten million dollars (\$10,000,000)
1296 annually with 10 percent set aside annually for certified
1297 tourism destination projects located in targeted or Alabama
1298 counties.

1299 (2) An approved company with a certified tourism
1300 destination project may be granted a tax rebate on any
1301 combination of the state and local sales and use taxes,
1302 lodging taxes, or other transactional taxes generated by or
1303 arising within the tourism destination project.

1304 (3) An approved company shall have no obligation to
1305 refund or otherwise return any amount of taxes authorized for
1306 rebate to the persons from whom the taxes were collected.

1307 (4) Rebates authorized under this article shall be for
1308 up to 10 years, commencing on the date the tourism attraction
1309 opens for business and begins to collect taxes generated by,
1310 or arising within, the tourism destination project.

1311 (5) Tax rebates may be a combination of state and local
1312 retail sales tax, state and local lodging taxes, and any other
1313 taxes generated by, or arising within, the tourism destination
1314 project. The municipality or the taxing district where the
1315 tourism destination project will be located must support and
1316 approve the facility. The approval must be in the form of a



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1317 resolution of the governing authority acknowledging support of
1318 the project and acknowledging that a portion no less than 20
1319 percent of the tax rebates will be comprised of municipal
1320 taxes.

1321 (6) The Alabama Department of Revenue, in consultation
1322 with the Alabama Tourism Department, shall adopt rules and
1323 require the filing of a rebate form designed by the Department
1324 of Revenue to reflect the intent of this article. To begin the
1325 rebate process, once project phases open for business, the
1326 approved company must provide a listing of all sales tax
1327 accounts and account numbers related to the project. The
1328 Alabama Department of Revenue will provide these accounts and
1329 will begin making the required diversions into the Tourism
1330 Project Sales Tax Incentive Fund the month following
1331 notification. Rebate payments from the fund will be made each
1332 January and July to the approved company.

1333 (7) No tax rebate shall be granted to an approved
1334 company during a tax year that the approved company is
1335 simultaneously receiving any other state tax incentive
1336 associated with any individual tourism attraction project.

1337 (8) Any tax rebate shall be first applied to any
1338 outstanding tax obligation of the approved company that is due
1339 and payable to the state.

1340 (9) Rebates under this article shall be made without
1341 interest.

1342 (10) Tax rebates authorized under this article are
1343 transferrable to future owners of the qualifying tourism
1344 destination project.



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1345 (11) The tax rebate allowed under this article shall be
1346 effective beginning August 1, 2023, and shall continue through
1347 July 31, 2028, unless continued by an act of the Legislature.

1348 (12) Tax rebates for certified tourism destination
1349 projects are to be administered by the Alabama Department of
1350 Revenue.

1351 (d) Notwithstanding the ten million dollar
1352 (\$10,000,000) annual cap on tax rebates allowed, the board may
1353 approve an annual onetime designation of an additional two
1354 million five hundred thousand dollars (\$2,500,000) in tax
1355 rebates for one project per calendar year with a minimum
1356 capital investment amount of seventy-five million dollars
1357 (\$75,000,000).

1358 §40-18-474

1359 There is created the Tourism Project Sales Tax
1360 Incentive Fund, which may consist of monies appropriated or
1361 otherwise made available by the Legislature in any manner, and
1362 monies from any other source designated for deposit into such
1363 fund, but not include monies subject to a constitutional
1364 designation for some other purpose. Unexpended amounts
1365 remaining in the fund at the end of each fiscal year of the
1366 state revert. Any investment earnings or interest earned on
1367 amounts in the fund shall be credited to the fund.

1368 §40-18-475

1369 The department shall report to the Legislature by the
1370 second legislative day of the regular session of the third
1371 year following passage of this act, and annually thereafter,
1372 on the overall economic activity, usage, and impact to the



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1373 state of the tax rebates allowed for tourism destination
1374 projects. The information in the reports shall be consistent
1375 with the information required by the Legislature in accordance
1376 with Section 40-1-50. Information provided pursuant to this
1377 section is exempt from the confidentiality provisions of
1378 Section 40-2A-10.

1379 Section 6. This act shall become effective immediately
1380 following its passage and approval by the Governor, or its
1381 otherwise becoming law.



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Speaker of the House of Representatives

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 13-Apr-23, as amended.

John Treadwell
Clerk

Senate

20-Apr-23

Passed