

HB241 INTRODUCED



1 Z4OGWR-1

2 By Representatives Garrett, Ledbetter, Daniels, Reynolds

3 RFD: Ways and Means Education

4 First Read: 04-Apr-23

5



4 SYNOPSIS:

5 Under existing law, the Alabama Jobs Act
6 provides certain incentives to allow the state to
7 foster economic development through the recruitment of
8 quality projects and the expansion of existing
9 businesses within Alabama.

10 Under existing law, the Growing Alabama Act
11 provides a tax credit to eligible taxpayers who make
12 contributions to economic development organizations for
13 approved qualifying projects.

14 This bill would allow Alabama Jobs Act economic
15 development programs to continue through July 31, 2028,
16 ensuring economic growth, workforce development, and
17 job creation. This bill would increase the current
18 annualized cap each year for five years allowing
19 Alabama to be more competitive for larger economic
20 development projects. This bill would allow the
21 investment tax credit transfer time to increase to five
22 years allowing incentivized companies the ability to
23 better realize credits for development projects.

24 This bill would allow Growing Alabama Act
25 programs to continue through July 31, 2028, and
26 increase the annual cap to allow greater expansion of
27 economic development programs. This bill would transfer
28 certain programs under Growing Alabama Act to Innovate



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Alabama for continued growth and support.

This bill would allow the Alabama Data Center Processing Economic Incentive Enhancement Act incentive to continue through July 31, 2028.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Jobs Act and the Growing Alabama Act; to amend Sections 40-18-370, 40-18-372, 40-18-374, 40-18-375, 40-18-376, 40-18-376.1, 40-18-376.2, 40-18-376.3, 40-18-376.4, 40-18-377, 40-18-378, 40-18-382, 40-18-383, 40-18-417.1, 40-18-417.2, 40-18-417.3, 40-18-417.4, 40-18-417.7, and 40-9B-4.1, Code of Alabama 1975, to extend the Alabama Jobs Act sunset date to July 31, 2028; to increase the annualized cap on outstanding Alabama Jobs Act incentives by twenty-five million dollars each year for five years up to four hundred seventy-five million dollars; to increase the investment tax credit transfer time to provide that the first five years of the investment credit may be transferred by the incentivized company and applied by another person or company under the Alabama Jobs Act; to extend the Growing Alabama Act sunset date to July 31, 2028, to increase the annual cap on funding approved pursuant to the Growing Alabama Act to thirty-five million dollars; to remove certain programs from the Growing Alabama Act for the transfer to Innovate Alabama.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



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

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

"§40-18-370

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

(b) The Legislature makes the following findings:

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

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

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

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

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

(6) The Constitution of the State of Alabama grants the



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Legislature the authority to approve and authorize exemptions, exclusions, deductions, and credits from taxation in order to define the net proceeds of any tax payable under state law.

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

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

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

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

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

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

(2) CAPITAL INVESTMENT. All costs and expenses incurred by the incentivized company in connection with the acquisition, construction, installation, and equipping of a qualifying project, if such costs are required to be capitalized for purposes of the federal income tax, determined without regard to any rule that permits expenditures properly



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chargeable to a capital account to be treated as current expenditures. However, for any project involving the extraction of natural resources, the capital investment shall not include the costs of acquiring land, land recording fees, architectural and engineering services, environmental studies and environmental mitigation.

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

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

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

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

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

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

~~(6) (5) INCENTIVE PERIOD. The period or periods of time during which an incentivized company can receive one or more~~



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141 of the jobs act incentives.

142 ~~(7)~~ (6) INCENTIVIZED COMPANY. An approved company and
143 any related company that are allowed to claim one or more of
144 the jobs act incentives as provided for in the project
145 agreement.

146 ~~(8)~~ (7) INVESTMENT CREDIT. The annual incentive provided
147 in Section 40-18-376.

148 ~~(9)~~ (8) JOBS ACT INCENTIVES. The jobs credit and the
149 investment credit as authorized and provided for in this
150 article.

151 ~~(10)~~ (9) JOBS CREDIT. The annual incentive provided in
152 Section 40-18-375.

153 ~~(11)~~ (10) NAICS CODE. Any sector, subsector, industry
154 group, industry or national industry of the 2012 North
155 American Industry Classification System, or any similar
156 classification system developed in conjunction with the United
157 States Department of Commerce or Office of Management and
158 Budget.

159 ~~(12)~~ (11) PROJECT. Any land, building, or other
160 improvements, and all real and personal properties, whether or
161 not contiguous and whether or not previously in existence, if
162 in Alabama and if deemed necessary or useful in connection
163 with an activity listed in Section 40-18-372(1).

164 ~~(13)~~ (12) PROJECT AGREEMENT. The agreement entered into
165 between an approved company and the Governor establishing the
166 terms and conditions for the provision of the jobs act
167 incentives, as provided for in Section 40-18-374.

168 ~~(14)~~ (13) QUALIFYING PROJECT. Any project to be



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undertaken by an approved company that satisfies Section 40-18-372.

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

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

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

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

"§40-18-372

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

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

a. Described by NAICS Code 1133, 115111, 2121, 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482, 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493, 511, 5121 (other than 51213), 51221, 517, 518 (without regard to the premise that data processing and related services be



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performed in conjunction with a third party), 51913, 52232, 54133 (if predominantly in furtherance of another activity described in this article), 54134 (if predominantly in furtherance of another activity described in this article), 54138, 5415, 541614, 5417, 55 (if not for the production of electricity), 561422 (other than establishments that originate telephone calls), 562213, 56291, 56292, 611512, 927, or 92811.

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

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

~~e.d.~~ The conduct of original investigations undertaken on a systematic basis to gain new knowledge or the application of research findings or other scientific knowledge to create



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new or significantly improved products or processes.

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

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

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

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

Notwithstanding the foregoing, a qualifying project may



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

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

a. Any number of new employees, for a qualifying project in which the predominant activity involves chemical manufacturing, data centers, renewable energy generation, engineering, design, or research, metal/machining technology or toolmaking; or

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



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281 "§40-18-374

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

285 (b) In order for an incentivized company to claim the
286 jobs act incentives, the Governor and the incentivized company
287 shall execute a project agreement. The agreement shall contain
288 all of the following:

289 (1) The name of the incentivized company;

290 (2) The location of the qualifying project;

291 (3) The activity to be conducted at the qualifying
292 project;

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

295 (5) The capital investment to be made at the qualifying
296 project;

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

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

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

304 (9) The dates or conditions that shall begin the
305 running of the incentive periods for applicable jobs act
306 incentives;

307 (10) The lengths of the incentive periods for the jobs
308 act incentives;



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

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

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

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

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

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

"§40-18-375

(a) (1) If provided for in the project agreement and in accordance with the terms therein, the incentivized company is allowed a jobs credit against utility taxes, in an annual amount ~~equal~~up to 3 percent of the wages paid to ~~eligible~~ Alabama resident employees during the prior year. The incentive period shall ~~be~~not exceed 10 years.

(2) If the incentivized company is engaged in pharmaceutical, biomedical, medical technology or medical



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supplies manufacturing, or its related research and development activities, the incentivized company is allowed a jobs credit against utility taxes, in an annual amount ~~equal up~~ to 4 percent of the wages paid to ~~eligible~~ Alabama resident employees during the prior year. The incentive period shall ~~be not exceed~~ 10 years. This applies to companies that predominantly conduct an activity described by NAICS code 3254, 339112, or 339113, to include related research and development.

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

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

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

(2)a. The jobs credit may be claimed as a credit against utility taxes actually paid until the effective date



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of this act, after which time the provisions of subdivision (b) (1) shall control and the offset provided in this subdivision shall cease unless the provisions stated in subdivision (b) (1) are explicitly stated in the project agreement that was executed prior to the effective date of this act. In any one year, if the credit exceeds the amount of taxes that are allowed to be offset by the project agreement and that are owed by the incentivized company, the incentivized company may carry the credit forward, to the extent allowed in the project agreement. No carryforward shall be allowed for more than five years. Rules similar to those used for Section 40-18-15.2 shall be applied.

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

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

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



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393 "§40-18-376

394 (a) If provided for in the project agreement, the
395 incentivized company is allowed an investment credit in an
396 annual amount ~~equal~~up to 1.5 percent of the capital investment
397 incurred as of the beginning of the incentive period, to be
398 used as follows:

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

401 (2) To offset the financial institution excise tax
402 found in Chapter 16;

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

406 (4) To offset utility taxes;

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

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

411 The incentive period shall begin no earlier than the
412 placed-in-service date. The incentive period shall ~~be~~not
413 exceed 10 years. ~~Should only some portion of a tax year be~~
414 ~~included in the incentive period, the amount of the investment~~
415 ~~credit shall be prorated on a daily basis.~~

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

420 (1)a. The investment credit may be claimed as a credit



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

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

(2) The project agreement may authorize an incentivized company that is taxed as a flow-through entity to allocate the credit among some or all of the owners in any manner specified, regardless of whether the allocation follows rules similar to 26 U.S.C. § 704(b) and the regulations thereunder. The owners may then use their allocated share of the investment credit to offset any of the taxes listed in subsection (a), as provided in subdivision (1). This subdivision shall be liberally construed to apply to multiple levels of companies, to allow the investment credits to be used by those persons bearing the tax burdens of the qualifying project, and such companies shall include but shall



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in no way be limited to flow-through entities, employee stock ownership plans, mutual funds, real estate investment trusts, and it shall also apply to offset the income tax liability of employee/owners of a flow-through entity owned by an employee stock ownership plan trust.

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

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

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

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

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

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

~~Upon making affirmative findings on the criteria set~~



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

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

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

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

~~d. Upon receipt of the certifications from the Department of Commerce as required by paragraph c., the~~The Department of Revenue shall adopt a transfer statement form to be filed by the transferor in a manner prescribed by the



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Department of Revenue. The transfer statement form shall
include the name and federal taxpayer identification number of
the transferor and each transferee listed therein along with
the amount of the tax credit to be transferred to each
transferee listed on the form. The transfer statement form
shall also contain such other information as the Department of
Revenue may reasonably require. For each transfer of a credit,
the incentivized company shall file with the Department of
Revenue, and a copy to the Department of Commerce, (1) a
completed transfer statement form; (2) a copy of the
investment credit certification issued by the Department of
Commerce; and (3) a copy of the executed transfer agreement.
Filing of the executed transfer agreement with the Department
of Revenue shall perfect such transfer to the respect to such
transferee and the Department of Revenue shall thereafter
allow the appropriate amount of the investment credit to
offset the tax liability of the transferee for any of the
taxes listed in subsection (a) and, for any project agreements
entered into after January 1, 2021 only, state license taxes
levied by Article 2 of Chapter 21. In any one year, if the
investment credit exceeds the amount of taxes that are allowed
to be offset and that are owed by the transferee, the
transferee may carry the credit forward for five years. A
transferee may not make a subsequent transfer of the credit.
The Department of Revenue may adopt rules necessary to
implement and administer the transfer provisions as provided
in this act.

~~e.~~ If a credit is transferred, an incentivized company



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that is later determined by the Secretary of Commerce to have defaulted under the project agreement shall be liable for the underpayment of tax attributable to the credit and for penalties and interest thereon. Unless the purchase of the credits is determined to have been made in a fraudulent manner, or is a transfer in anticipation of bankruptcy, insolvency, or closure, a transferee shall not be liable for the unpaid tax attributable to the credit, or for penalties or interest thereon.

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

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

(2) To the extent the investment credit is used to offset an insurance premium tax liability, the Department of Finance shall adopt rules to ensure that the credit would in no case reduce the distributions to the Alabama Special Mental Health Trust Fund by using any unencumbered funds.

(3) To the extent the investment credit is used to offset liability for the tax imposed by Section 40-21-82 or Article 2 of Chapter 21, the Department of Finance shall adopt



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rules to ensure that the credit in no case would reduce the distribution for the Alabama Special Mental Health Trust Fund by using any unencumbered funds."

"§40-18-376.1

(a) As used in this section, the following terms shall have the following meaning:

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

a. That does not qualify as a targeted county.

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

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

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

(b) In making the findings required by Section 40-18-373(a), a company that proposes a qualifying project in a targeted or jumpstart county shall be an approved company for purposes of this section only if the Secretary of Commerce makes the additional finding that the qualifying project will



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increase the economic diversity of, or otherwise benefit, the targeted or jumpstart county.

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

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

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

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

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

"§40-18-376.2

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

(1) Any incentivized company that employed, in the



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prior year, at least 12 percent of its ~~eligible~~ employees as veterans who received an honorable or general discharge. ~~The calculation of the percentage of eligible employees who are veterans shall be made using the method provided in a project agreement.~~

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

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

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

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

(d) The Department of Labor shall periodically verify the actual number of veterans employed by the incentivized company described in subdivision (1) of subsection (a) and the wages of the veterans during the relevant year. If the Department of Labor is not able to provide the verification



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utilizing all available resources, it may request any additional information from the incentivized company as may be necessary."

"§40-18-376.3

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

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

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

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

(1) A jobs credit against utility taxes~~r~~ in an annual amount ~~equal~~up to 4 percent of the wages paid to ~~eligible~~Alabama resident employees during the prior year. The incentive period shall ~~be~~not exceed 10 years.

(2) An investment credit as provided in Section



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673 40-18-376.

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

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

678 a. Activities within subsector 518; industry group
679 5112, 5121 (other than 51213), 5415, or 5417; or industry
680 51913 of the 2012 North American Industry Classification
681 System, or any similar classification system developed in
682 conjunction with the United States Department of Commerce or
683 Office of Management and Budget.

684 b. The use of technology to develop new coding or
685 processes for the creation or delivery of goods or services in
686 the following fields, or any additional activities determined
687 by the Secretary of Commerce to be beneficial to the
688 enhancement of businesses rooted in either of the following
689 fields:

690 1. Any of the fields of education, healthcare, energy,
691 agriculture, infrastructure, software, robotics, nutrition,
692 aerospace, automotive, or financial services.

693 2. Any fields related to science, technology,
694 engineering, or mathematics.

695 (2) A company that, for a fixed term, educates and
696 mentors early-stage technology companies recruited to a
697 location in Alabama, with the goal of accelerating the
698 companies' development and growth."

699 "§40-18-376.4

700 (a) This section shall be applicable to an



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

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

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

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

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

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

(1) The company is a for-profit business headquartered in a community eligible for investment through the federal New Markets Tax Credit program under 26 U.S.C. § 45D(e), has fewer than 10 employees at the time the project agreement is executed, and has average gross revenues of less than five



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hundred thousand dollars (\$500,000) in the company's three years prior to the execution of the project agreement; or

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

"§40-18-377

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

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

(c) The acceptance of a tax credit under this article shall constitute approval and written consent by the taxpayer to disclose to the Secretary of Commerce the total tax liability, net operating loss, amount of credit claimed, recipient of the credit, and any transferor and transferee information. The Department of Revenue shall disclose such information to the Department of Commerce upon written request by the Secretary of Commerce. The information shall be limited to what is necessary to administer the provisions of this



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article. Upon receipt of this information, the provisions of Section 40-2A-10 shall apply to the Department of Commerce and its employees with respect to the use, dissemination, or other handling of the information."

"§40-18-378

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

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

(c) (1) An incentivized company shall be liable for any unearned portion of the jobs credit or investment credit it claims or transfers pursuant to this article. The jobs credit will be considered unearned when the incentivized company fails to pay the full amount of wages or create the full



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number of jobs upon which the credit was based and claimed. The investment credit will be considered unearned when the incentivized company fails to make the full capital investment upon which the credit was based and claimed or upon which the credit was valued and then transferred. The incentivized company shall be liable for only that portion of the jobs credit or investment credit that was unearned. Any credit claimed by an owner of an incentivized company is deemed to have been claimed by the incentivized company for purposes of this subsection.

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

(3) The Department of Revenue may assess an incentivized company for any unearned portion of the investment credit or jobs credit, with allowed interest and penalties, pursuant to the terms of Chapter 2A or 29. The liability shall be considered an underpayment of the tax against which the respective credit was applied or refunded.



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

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

"§40-18-382

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

"§40-18-383

(a) At no time prior to the calendar year ending



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~~December 31, 2020, shall the annualized balance of outstanding jobs act incentives exceed \$300 million, which amount would increase to three hundred twenty-five million dollars (\$325,000,000) for the calendar year ending~~ December 31, 2021 and shall the annualized balance of the outstanding jobs act incentives exceed three hundred fifty million dollars (\$350,000,000) ~~for the calendar year ending December 31, 2022,~~ which amount would increase to three hundred seventy-five million dollars (\$375,000,000) for the calendar year ending December 31, 2023, four hundred million dollars (\$400,000,000) for the calendar year ending December 31, 2024, four hundred twenty-five million dollars (\$425,000,000) for the calendar year ending December 31, 2025, four hundred fifty million dollars (\$450,000,000) for the calendar year ending December 31, 2026, and four hundred seventy-five million dollars (\$475,000,000) for the calendar year ending December 31, 2027, unless the Legislature enacts legislation to allow additional jobs act incentives. Of the above annualized balance, twenty million dollars (\$20,000,000) shall apply to qualifying projects located in targeted or jumpstart counties as described in Section 40-18-376.1.

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

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



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869 "§40-18-417.1

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

872 ~~+(1) ACCELERATOR. A company that, for a fixed term,~~
873 ~~educates and mentors early-stage technology companies~~
874 ~~recruited to a location in Alabama, with the goal of~~
875 ~~accelerating the companies' development and growth.~~

876 ~~+(2)~~ (1) CAPITAL IMPROVEMENTS. Construction and
877 rehabilitation expenses of a capital nature at an inland port
878 or intermodal facility, the dredging of waterways in the
879 immediate vicinity of an inland port, and the expansion of
880 onsite storage facilities at an inland port or intermodal
881 facility.

882 ~~+(3)~~ (2) ECONOMIC DEVELOPMENT ACTIVITIES. Activities and
883 initiatives that enhance the use of, and flow of goods
884 through, an inland port or intermodal facility.

885 ~~+(4)~~ (3) ECONOMIC DEVELOPMENT ORGANIZATION. A local
886 economic development organization or a state economic
887 development organization.

888 ~~+(5)~~ (4) GROWING ALABAMA CREDIT. The credit provided for
889 in subsection (a) of Section 40-18-417.4.

890 ~~+(6)~~ (5) INDUSTRY or BUSINESS. An entity that would
891 conduct at a site an activity that is primarily described in
892 Section 40-18-372(1).

893 ~~+(7)~~ (6) INLAND PORT. Any port on a navigable river away
894 from traditional land, air, and coastal borders.

895 ~~+(8)~~ (7) INTERMODAL FACILITY. Any facility that
896 interconnects two or more different modes of air, rail, or



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897 road traffic serving multiple customers, and which involves
898 storage facilities.

899 ~~(9)~~ (8) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION.

900 Organizations which are determined by the Department of
901 Commerce to meet both of the following criteria:

902 a. The organization is an Alabama entity not operating
903 for profit, including, but not limited to, a municipality or
904 county, an industrial board or authority, a chamber of
905 commerce, or some other foundation or Alabama nonprofit
906 corporation charged with improving a community or region of
907 the state.

908 b. The organization has a record of supporting or
909 otherwise participating in economic development in some part
910 of this state.

911 ~~(10)~~ (9) RENEWAL OF ALABAMA COMMISSION. The Renewal of
912 Alabama Commission created by Section 40-18-402.

913 ~~(11)~~ (10) SITE. Real property owned by a local economic
914 development organization and intended for use by an industry
915 or business.

916 ~~(12)~~ (11) STATE ECONOMIC DEVELOPMENT ORGANIZATION. An
917 organization that is determined by the Department of Commerce
918 to be an Alabama entity not operating for profit which is
919 charged with improving the state or a region of the state and
920 has a record of supporting or otherwise participating in
921 economic development in the state."

922 "§40-18-417.2

923 (a) (1) A local economic development organization which
924 owns a site may apply to the Department of Commerce for



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

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

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

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

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

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

(2) An economic development organization may apply to the Department of Commerce for funding to undertake ~~any of the~~



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~~following issues:~~

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

~~b. The~~the construction, maintenance, promotion, operation, management, leasing, and subleasing of an agricultural center which includes a multi-use facility and related commercial and noncommercial structures for livestock, equestrian, small animal shows and events, spectator events, trade shows, educational conferences, agricultural and agricultural related industries, educational, demonstrational or training purposes, educational and training conferences or events, recreational vehicle rallies, recreational vehicle multi-day parking, hosting of corporate and non-corporate organization meetings, use as fair grounds, operation of retail activities, and other events and facilities expected to draw participants and spectators from states located across the southeastern United States, with a projected total annual economic impact upon completion of all phases of the agricultural center of at least thirty-five million dollars (\$35,000,000) and with the related and supporting infrastructure and facilities having a projected capital expenditure upon completion of all phases of the agricultural center of at least one hundred million dollars (\$100,000,000); provided that the application is accompanied by an economic



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impact report on the agricultural center.

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

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

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

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

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

"§40-18-417.3

(a) Following a review, if the Department of Commerce should approve the application provided in subsection (a) of



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1009 Section 40-18-417.2, it shall forward the application to the
1010 Renewal of Alabama Commission.

1011 (b) The Renewal of Alabama Commission shall consider
1012 the application and shall approve it if the commission deems
1013 it worthy of approval. As to improvements at industrial sites,
1014 the commission shall give preference to sites with at least
1015 1,000 acres of available space. As to applications for
1016 projects located in communities which have the potential to
1017 provide additional funding separate from the Growing Alabama
1018 Credits, the commission shall take into consideration whether
1019 the separate funding is to be provided to the project that is
1020 the subject of the application. Meetings of the commission are
1021 subject to Chapter 25A of Title 36. Notwithstanding the
1022 foregoing, the commission may meet by telephone or some other
1023 telecommunications device so long as members of the public are
1024 allowed the opportunity to listen to or otherwise observe the
1025 commission's deliberations.

1026 (c) The approval of an application by the commission
1027 shall specify the amount of money which the economic
1028 development organization is allowed to receive so that it can
1029 complete the work specified in the application.

1030 (d) Following approval by the commission, the
1031 Department of Commerce shall enter into an agreement with the
1032 economic development organization which shall do all of the
1033 following:

1034 (1) Require the economic development organization to
1035 use funding received as a result of this law only for the
1036 purposes approved by the commission as expressed in the



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1037 agreement.

1038 (2) Require the economic development organization to
1039 make periodic reports, not more often than annually, to the
1040 Department of Commerce and the commission, as required by the
1041 commission, on the disposition of the funds. As to a project
1042 described in subdivision (a)(1) of Section 40-18-417.2, the
1043 report shall include information on the marketing of the site,
1044 and the ultimate use of the site until such time as it makes a
1045 final report. As to a project related to inland ports or
1046 intermodal facilities as described in paragraph (a)(1) d. of
1047 Section 40-18-417.2 or a project related to ~~a technology~~
1048 ~~company or~~an agricultural center as described in subdivision
1049 (a)(2) of Section 40-18-417.2, the report shall include an
1050 economic impact report.

1051 (3) Require the economic development organization to
1052 provide a review of its financial accounts as directed by the
1053 Renewal of Alabama Commission.

1054 (e) For any approved applications, the Department of
1055 Commerce shall notify the Department of Revenue of the
1056 information specified in subsection (c).

1057 (f) The Department of Commerce shall publish on its
1058 website a list of all approved applications and a list of the
1059 economic development organizations that made the approved
1060 applications."

1061 "§40-18-417.4

1062 (a) A taxpayer is allowed a Growing Alabama Credit to
1063 be applied against all of the following:

1064 (1) To offset the income taxes levied in this chapter,



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or as an estimated tax payment of income taxes.

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

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

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

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

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

(d) The cumulative amount of funding approved pursuant to this section shall not exceed twenty million dollars (\$20,000,000) in a calendar year for calendar years ending prior to January 1, 2023, and thirty-five million dollars (\$35,000,000) in a calendar year for calendar years beginning January 1, 2023. ~~Of that amount, no more than four million dollars (\$4,000,000) of funding in the aggregate may be~~



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~~approved for accelerator programs as described in Section
40-18-376.3(c)(2).~~

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

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

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

"§40-18-417.7

The Growing Alabama Credits provided in this article shall not be available for qualifying applicants as described



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in this article, for which applications are not approved on or prior to July 31, ~~2023~~2028, unless the Legislature enacts legislation to extend the date. This shall only affect the availability of credits for applications not approved on or prior to July 31, ~~2023~~2028, and shall not cause a reduction or suspension of any credits awarded on or prior to July 31, ~~2023~~2028."

"§40-9B-4.1

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

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

Section 4. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.