

**HB247 ENROLLED**



1 2YQ7KI-2

2 By Representatives Daniels, Garrett, Ledbetter, Drummond,  
3 South, Reynolds, Whitt, Travis, Kirkland, Bracy, Moore (M),  
4 Hall, Lee, Faulkner, Jackson, Chestnut, Lovvorn

5 RFD: Ways and Means Education

6 First Read: 04-Apr-23

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1 Enrolled, An Act,

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4 Relating to economic development; to amend Sections  
5 41-10-802 and 41-10-822, Code of Alabama 1975, to provide for  
6 a name change for the Alabama Innovation Corporation and  
7 revise the residency requirements for certain grant  
8 recipients; to amend Section 41-10-805, Code of Alabama 1975,  
9 relating to the Board of Directors of the Alabama Innovation  
10 Corporation, to make conforming changes to accurately cite the  
11 Code of Alabama 1975; and to add a new Article 22, commencing  
12 with Section 41-10-840, to Chapter 10 of Title 41, Code of  
13 Alabama 1975, to reestablish the technology accelerator tax  
14 credit program and the underrepresented company tax credit  
15 program as the Innovating Alabama tax credit program; and to  
16 exempt working groups, task forces, and subcommittees of the  
17 Alabama Innovation Corporation from the Alabama Open Meetings  
18 Act.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 41-10-802, 41-10-805, and  
21 41-10-822, Code of Alabama 1975, are amended to read as  
22 follows:

23 "§41-10-802

24 (a) The Governor, the Speaker of the House of  
25 Representatives, and the President Pro Tempore of the Senate  
26 shall present to the Secretary of State an application, signed  
27 by each of them, for the formation of the Alabama Innovation  
28 Corporation, which may also be known as Innovate Alabama, as a



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29 public corporation, having a legal existence separate and  
30 apart from the state and any county, municipality, or  
31 political subdivision, which shall set forth all of the  
32 following:

33 (1) The name, official designation, and official office  
34 location of each of the applicants, together with a certified  
35 copy of the commission evidencing each applicant's right to  
36 office.

37 (2) The date on which each applicant was sworn into  
38 office and the term of office of each applicant.

39 (3) The name of the proposed public corporation, which  
40 shall be the Alabama Innovation Corporation, also known as  
41 Innovate Alabama.

42 (4) The location of the principal office of the  
43 proposed corporation.

44 (5) Any other matter relating to the corporation that  
45 the applicants may choose to insert and that is not  
46 inconsistent with this article or state law.

47 (b) The application shall be subscribed and sworn to by  
48 each applicant before an officer authorized by the laws of the  
49 state to take acknowledgments to deeds. The Secretary of State  
50 shall examine the application, and, if he or she finds that  
51 the application substantially complies with the requirements  
52 of this section, the application shall be filed and recorded  
53 in an appropriate book of records in the office of the  
54 Secretary of State.

55 (c) When the application has been made, filed, and  
56 recorded as provided in subsection (b), the applicants shall



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57 constitute a public corporation under the name stated in the  
58 application, and the Secretary of State shall make and issue  
59 to the applicants a certificate of incorporation pursuant to  
60 this article, under the Great Seal of the State, and shall  
61 record the certificate with the application. There shall be no  
62 fees paid to the Secretary of State in connection with the  
63 corporation.

64 (d) Notwithstanding any provision of law to the  
65 contrary, any corporation incorporated pursuant to this  
66 section shall not be deemed to be a part of the state for any  
67 purpose but shall be treated as a public corporation and body  
68 politic separate and apart from the state."

69 "§41-10-805

70 The board may enter into contracts, leases, agreements,  
71 investments, and may otherwise expend monies without  
72 compliance with Article ~~2~~ 5, commencing with Section ~~41-16-20~~  
73 41-4-110, of Chapter ~~16~~ 4 of Title 41, and Chapter 2 of Title  
74 ~~39, or any requirements relating to the procurement of~~  
75 ~~professional service providers in Section 41-16-72~~. Solely as  
76 a result of entering into contracts, leases, agreements,  
77 investments, or otherwise, no for-profit or nonprofit private  
78 entity, nor the officers, employees, agents, or directors of  
79 any of the foregoing, shall become subject to Chapter 25 or  
80 Chapter 25A of Title 36; Article ~~2~~ 5, commencing with Section  
81 ~~41-16-20~~ 41-4-110, of Chapter ~~16~~ 4 of Title 41; Chapter 2 of  
82 Title 39; ~~Section 36-12-40, or any requirements relating to~~  
83 ~~the procurement of professional service providers in Section~~  
84 ~~41-16-72~~ or Article 3, commencing with Section 36-12-40, of



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85 [Chapter 12 of Title 36.](#)"

86 "§41-10-822

87 The corporation may make Small Business Innovation  
88 Research and Small Business Technology Transfer Research  
89 matching grants to entities as provided in this section.

90 (1) The corporation may establish priorities,  
91 guidelines, standards, and processes by which the matching  
92 grants contemplated in this article may be awarded.

93 (2) The corporation shall require interested entities  
94 to complete applications on forms issued by the corporation.

95 (3) If an entity is seeking a matching grant for a  
96 Small Business Innovation Research award, the application  
97 shall demonstrate either of the following:

98 a. For a Phase I application, that the entity has  
99 received a Phase I Small Business Innovation Research award  
100 from a federal agency in response to a specific federal  
101 solicitation.

102 b. For a Phase II application, that the entity has  
103 received a Phase II Small Business Innovation Research award  
104 from a federal agency in response to a specific federal  
105 solicitation.

106 (4) If an entity is seeking a matching grant for a  
107 Small Business Technology Transfer Research award, the  
108 application shall demonstrate either of the following:

109 a. For a Phase I application, that the entity has  
110 received a Phase I Small Business Technology Transfer Research  
111 award from a federal agency in response to a specific federal  
112 solicitation.



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113           b. For a Phase II application, that the entity has  
114 received a Phase II Small Business Technology Transfer  
115 Research award from a federal agency in response to a specific  
116 federal solicitation.

117           (5) Applications shall be considered by the board of  
118 the corporation. For an entity seeking a matching grant under  
119 subdivision (4), the corporation may give preference to  
120 entities seeking matching grants which conduct funded research  
121 in this state with HudsonAlpha Institute for Biotechnology,  
122 Southern Research Institute, public or nonprofit colleges or  
123 universities, community colleges, or any other entity located  
124 in the state which is described in 15 U.S.C. § 638(e)(8), with  
125 particular focus on underrepresented companies as defined in  
126 subsection (c) of Section 40-18-376.4, in a manner that  
127 reflects the diversity of gender, race, and geographical areas  
128 of the state, and small businesses conducting research in  
129 partnership with historically Black colleges and universities.  
130 Upon the approval of the board, the corporation may grant  
131 available funds to entities in amounts not to exceed the  
132 lesser of either of the following:

133           a. Fifty percent of the relevant federal Small Business  
134 Innovation Research or Small Business Technology Transfer  
135 award made to the entity.

136           b.1. For a matching grant awarded to match a federal  
137 Phase I award, one hundred thousand dollars (\$100,000); or

138           2. For a matching grant awarded to match a federal  
139 Phase II award, two hundred fifty thousand dollars (\$250,000).

140           (6) The corporation shall develop a marketing campaign



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141 directed at ensuring that underrepresented companies, as  
142 defined in subsection (c) of Section 40-18-376.4, and  
143 historically Black colleges and universities are aware of the  
144 federal Small Business Innovation Research and Small Business  
145 Technology Transfer Research programs, together with the  
146 Alabama award match program.

147 (7) The corporation shall develop a program that will  
148 provide federal Small Business Innovation Research and Small  
149 Business Technology Transfer Research program application  
150 assistance to underrepresented companies, as defined in  
151 subsection (c) of Section 40-18-376.4.

152 (8) The amount and all terms and conditions of the  
153 grant shall be memorialized in a grant agreement between the  
154 corporation and the entity, which agreement shall include all  
155 of the following terms and conditions:

156 a. The amount of the grant, or the formula under which  
157 the amount is computed.

158 b. The specific use of grant monies paid by the  
159 corporation, which use shall not be the recoupment of a  
160 personal investment in the entity or the repayment of debt.

161 c. The condition that the entity, within 12 months  
162 after receipt of the grant, shall have its primary place of  
163 business in this state, the place of residence of ~~one~~ the  
164 majority of its top executives in this state, and the place of  
165 residence of at least ~~75 percent~~ a majority of its employees  
166 for a period of five years after the effective date of the  
167 grant agreement in this state.

168 d. The requirement that the default of the entity,



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169 under any provision of the grant agreement, shall result in  
170 the repayment of any monies paid to the entity by the  
171 corporation, unless the entity should default because it  
172 ceases to be a going concern prior."

173 Section 2. A new Article 22, commencing with Section  
174 41-10-840, is added to Chapter 10 of Title 41, Code of Alabama  
175 1975, to read as follows:

176 Article 22.

177 §41-10-840

178 This article shall be known and may be cited as the  
179 Innovating Alabama Act.

180 §41-10-841

181 For purposes of this article, the following terms have  
182 the following meanings:

183 (1) ACCELERATOR. A company that, for a fixed term,  
184 educates and mentors early-stage technology companies  
185 recruited to a location in Alabama with the goal of  
186 accelerating the company's development and growth.

187 (2) ECONOMIC DEVELOPMENT ORGANIZATION. A local economic  
188 development organization or a state economic development  
189 organization.

190 (3) INNOVATE ALABAMA. The Alabama Innovation  
191 Corporation created by Section 41-10-802.

192 (4) INNOVATING ALABAMA TAX CREDIT. The tax credit  
193 provided for in subsection (a) of Section 41-10-844.

194 (5) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION. An  
195 organization that is determined by Innovate Alabama to meet  
196 both of the following criteria:





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197           a. The organization is an Alabama entity not operating  
198 for profit, including, but not limited to, a municipality or  
199 county, an industrial board or authority, a chamber of  
200 commerce, or some other foundation or Alabama nonprofit  
201 corporation charged with improving a community or region of  
202 the state.

203           b. The organization has a record of supporting or  
204 otherwise participating in economic development in some part  
205 of the state.

206           (6) STATE ECONOMIC DEVELOPMENT ORGANIZATION. An  
207 organization that is determined by Innovate Alabama to be an  
208 Alabama entity not operating for profit which is charged with  
209 improving the state or a region of the state and has a record  
210 of supporting or otherwise participating in economic  
211 development in the state.

212           §41-10-842

213           (a) (1) An economic development organization may apply  
214 to Innovate Alabama for Innovating Alabama tax credits to  
215 undertake any of the following projects:

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

222           b. The creation, operation, or support of programs  
223 designed to provide funding, workforce development, or other  
224 resources for an "innovative company" that meets either of the



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225 following criteria:

226           1. The company is a for-profit business headquartered  
227 in a community eligible for investment through the federal New  
228 Markets Tax Credit program under 26 U.S.C. § 45D(e),  
229 predominantly conducting an activity in an innovative  
230 industry, has fewer than 15 employees at the time the funding  
231 agreement is executed, and has average gross revenues of less  
232 than one million dollars (\$1,000,000) in the company three  
233 years prior to the execution of the funding agreement.

234           2. The company is a for-profit business that is  
235 headquartered in Alabama, predominantly conducting an activity  
236 in an innovative industry, has fewer than 75 employees at the  
237 time the funding agreement is executed, and that is at least  
238 51 percent owned and controlled by one or more persons who is  
239 a United States Citizen and who is a woman or is African  
240 American. As used in this subdivision, an innovative industry  
241 includes advanced manufacturing, aerospace, agriculture,  
242 bioscience, biotechnology, electronics, energy and natural  
243 resources, engineering, life sciences, and information  
244 technology industries, and any other innovative industry as  
245 determined by Innovate Alabama in its sole discretion.

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

251           (c) The application provided in subsection (a) shall  
252 include a notarized affirmation by an officer of the economic



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253 development organization that the submission of the  
254 application did not violate the conflict of interest policy  
255 referred to in subsection (b).

256 §41-10-843

257 (a) Innovate Alabama shall consider the application  
258 provided in subsection (a) of Section 41-1-842, and may  
259 approve the application if the applicant is deemed eligible.  
260 As to applications for projects located in communities which  
261 have the potential to provide additional funding separate from  
262 the Innovating Alabama tax credits, Innovate Alabama shall  
263 take into consideration whether the separate funding is to be  
264 provided to the project that is the subject of the  
265 application.

266 (b) The approval of an application by Innovate Alabama  
267 shall specify the amount of money which the economic  
268 development organization is allowed to receive so that the  
269 economic development organization can complete the project  
270 specified in the application.

271 (c) Following approval by Innovate Alabama, Innovate  
272 Alabama shall enter into an agreement with the economic  
273 development organization which shall do all of the following:

274 (1) Require the economic development organization to  
275 use funding received as a result of this article only for the  
276 purposes approved by Innovate Alabama as expressed in the  
277 agreement.

278 (2) Require the economic development organization to  
279 make periodic reports, not more often than annually, to  
280 Innovate Alabama, on the disposition of the funds. The report



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281 shall also include an economic impact report.

282 (3) Require the economic development organization to  
283 provide a review of its financial accounts as directed by  
284 Innovate Alabama.

285 (d) For any approved applications, Innovate Alabama  
286 shall notify the Department of Revenue of the information  
287 specified in subsection (b).

288 §41-10-844

289 (a) A taxpayer is allowed an Innovating Alabama tax  
290 credit to be applied against all of the following:

291 (1) To offset the income taxes levied in Chapter 18 of  
292 Title 40 or as an estimated tax payment of income taxes.

293 (2) To offset the state portion of the financial  
294 institution excise tax levied in Chapter 16 of Title 40.

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

297 (4) To offset state license taxes levied by Article 2  
298 of Chapter 21 of Title 40.

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

303 (c) Innovating Alabama tax credits shall be granted to  
304 taxpayers using an online system administered by the  
305 Department of Revenue. The online system shall allow taxpayers  
306 to agree to make a cash contribution to an economic  
307 development organization which was approved by Innovate  
308 Alabama, as provided in Section 41-10-843. The online system



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309 shall ensure that Innovating Alabama tax credits are not  
310 granted for contributions to an economic development  
311 organization in excess of the amounts approved by Innovate  
312 Alabama, as provided in Section 41-10-843.

313 (d) The cumulative amount of funding approved pursuant  
314 to this section shall not exceed twenty-five million dollars  
315 (\$25,000,000) in a calendar year for calendar years beginning  
316 January 1, 2023. The Department of Commerce shall enter into a  
317 memorandum of understanding with Innovate Alabama to provide  
318 administrative assistance to manage the Innovating Alabama tax  
319 credit program; provided, that this memorandum of  
320 understanding shall terminate on December 31, 2023.

321 (e) Innovate Alabama shall reserve at least ten million  
322 dollars (\$10,000,000) of the amounts specified in subsection  
323 (d) for projects described in Section 41-10-842(a)(1)b.

324 (f) To the extent that an Innovating Alabama tax credit  
325 is used by a taxpayer, the taxpayer shall not be allowed any  
326 deduction that would have otherwise been allowed for the  
327 taxpayer's contribution. Tax credits may only be claimed by  
328 the donating taxpayer and may not be assigned or transferred  
329 to any other taxpayer. For purposes of this section, a  
330 donating taxpayer includes a taxpayer who is a shareholder of  
331 an Alabama S corporation or a partner or member of a  
332 subchapter K entity that made a contribution to an economic  
333 development organization which was approved by Innovate  
334 Alabama.

335 (g) The Department of Finance shall adopt rules to  
336 ensure that the Innovating Alabama tax credit program in no



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337 case would reduce the distribution for the Alabama Special  
338 Mental Health Trust Fund by using any unencumbered funds to  
339 ensure that an Innovating Alabama tax credit shall not be  
340 limited, prevented, or reduced.

341 §41-10-845

342 (a) Upon receipt of funding provided by the tax credit  
343 process in Section 41-10-844, the economic development  
344 organization shall proceed with the project that was specified  
345 in the application required by Section 41-10-842.

346 (b) As to a project described in subdivision (a)(1) of  
347 Section 41-10-842, the economic development organization shall  
348 report to Innovate Alabama upon the completion of the project  
349 and at such times as may be required or requested by Innovate  
350 Alabama.

351 §41-10-846

352 (a) All filings and applications made with any  
353 department of the state government shall be made using forms  
354 adopted by that department. The filing shall be treated as a  
355 tax return subject to penalties imposed by the Department of  
356 Revenue.

357 (b) Nothing in this article shall be construed to  
358 constitute a guarantee or assumption by the state of any debt  
359 of any company nor to authorize the credit of the state to be  
360 given, pledged, or loaned to any company.

361 (c) Nothing in this article shall be construed to make  
362 available to any taxpayer any right to the benefits conferred  
363 by this article absent strict compliance with this article.

364 (d) Nothing in this article shall be construed to limit



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365 the powers otherwise existing for the Department of Revenue to  
366 audit and assess a taxpayer claiming the Innovating Alabama  
367 tax credit.

368 (e) Innovate Alabama and the Department of Revenue may  
369 adopt rules as necessary to implement and administer this  
370 article.

371 §41-10-847

372 The Innovating Alabama tax credits provided in this  
373 article shall not be available for qualifying applicants as  
374 described in this article, for which applications are not  
375 approved on or prior to July 31, 2028, unless the Legislature  
376 enacts legislation to extend the date. This shall only affect  
377 the availability of credits for applications not approved on  
378 or prior to July 31, 2028, and shall not cause a reduction or  
379 suspension of any credits awarded on or prior to July 31,  
380 2028.

381 Section 3. Given the collaborative and dynamic nature  
382 of accelerator programs and Innovate Alabama generally, the  
383 working groups, task forces, and subcommittees of Innovate  
384 Alabama, shall not be subject to Chapter 25A of Title 36, Code  
385 of Alabama 1975, notwithstanding any other provision of law.

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



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Speaker of the House of Representatives

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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.

John Treadwell  
Clerk

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Senate

**20-Apr-23**

Passed