

ACT# 2009-722

1 HB568
2 110373-9
3 By Representative Knight
4 RFD: Education Appropriations
5 First Read: 19-FEB-09



1
2 ENROLLED, An Act,

3 To allow additional categories of industries to be
4 eligible for Alabama's existing incentives. To offer new or
5 expanding businesses incentives on an equal basis to new or
6 expanding corporate headquarters, data processing centers
7 (including those of financial institutions and insurance
8 companies), and research and development facilities; to offer
9 incentives to new or expanding businesses on an equal basis to
10 new or expanding producers of electricity or natural gas from
11 renewable energy resources or biofuels as well as biofuel
12 producers; to increase the base wage requirement for
13 qualifying projects and index that wage requirement.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. The Legislature finds that the growth of
16 the "white collar" service economy in Alabama should be
17 addressed. Therefore, it is the intent of the Legislature to
18 offer incentives to new or expanding businesses on an equal
19 basis to new or expanding corporate headquarters, data
20 processing centers (including those of financial institutions
21 and insurance companies), and research and development
22 facilities. Further, the Legislature finds that the growth of
23 renewable energy producers and other types of "green"
24 employers in Alabama should be encouraged. Therefore, it is
25 the intent of the Legislature to offer incentives to new or

1 expanding businesses on an equal basis to new or expanding
2 producers of electricity or natural gas from renewable energy
3 resources or biofuels as well as biofuel producers. The
4 legislature further finds that an increase in the base wage
5 requirement for qualifying projects and an index to that wage
6 requirement will produce positive economic development for the
7 State.

8 Section 2. Sections 40-9B-3, 40-18-190, 40-18-193,
9 40-18-194, and 40-18-202.1 are amended to read as follows:

10 "§40-9B-3.

11 "(a) For purposes of this chapter, the following
12 words and phrases mean:

13 "(1) ABATE, ABATEMENT. A reduction or elimination of
14 a taxpayer's liability for tax or payments required to be made
15 in lieu thereof. An abatement of transaction taxes imposed
16 under Chapter 23 of this title, or payments required to be
17 made in lieu thereof, shall relieve the seller from the
18 obligation to collect and pay over the transaction tax as if
19 the sale were to a person exempt, to the extent of the
20 abatement, from the transaction tax.

21 "(2) ALTERNATIVE ENERGY RESOURCES. The definition
22 given in Section 40-18-1.

23 "(3) CONSTRUCTION RELATED TRANSACTION TAXES. The
24 transaction taxes imposed by Chapter 23 of this title, or
25 payments required to be made in lieu thereof, on tangible

1 personal property and taxable services incorporated into an
2 industrial development property, the cost of which may be
3 added to capital account with respect to the property,
4 determined without regard to any rule which permits
5 expenditures properly chargeable to capital account to be
6 treated as current expenses.

7 "(4) DATA PROCESSING CENTER. An establishment at
8 which not less than fifty new jobs are located, and which is
9 engaged in the provision of complete processing and
10 specialized reports from data, the provision of automated data
11 processing and data entry services, the provision of an
12 infrastructure for hosting or data processing services, the
13 provision of specialized hosting activities, the provision of
14 application service provisioning, the provision of general
15 time-share mainframe facilities, or some combination of the
16 foregoing, without regard to whether any other activities are
17 conducted at the establishment.

18 "(45) EDUCATION TAXES. Ad valorem taxes, or payments
19 required to be made in lieu thereof, that must, pursuant to
20 the Constitution of Alabama of 1901, as amended, legislative
21 act, or the resolution or other action of the governing board
22 authorizing the tax, be used for educational purposes or for
23 capital improvements for education and local construction
24 related transaction taxes levied for educational purposes or
25 for capital improvements for education.

1 "(6) HEADQUARTERS FACILITY. Any trade or business
2 described in the 2007 North American Industry Classification
3 System, promulgated by the Executive Office of the President
4 of the United States, Office of Management and Budget,
5 National Industry 551114, at which not less than fifty new
6 jobs are located.

7 "(57) HYDROPOWER PRODUCTION. The definition given in
8 Section 40-18-1.

9 "(68) INDUCEMENT. Refers to an agreement, or an
10 "inducement agreement," entered into between a private user
11 and a public authority or county or municipal government
12 and/or a resolution or other official action, an "inducement
13 resolution," "inducement letter," or "official action" adopted
14 by a public authority or county or municipal government, in
15 each case expressing, among other things, the present intent
16 of such public authority or county or municipal government to
17 issue bonds in connection with the private use property
18 therein described.

19 "(79) INDUSTRIAL DEVELOPMENT PROPERTY. Real and/or
20 personal property acquired in connection with establishing or
21 expanding an industrial or research enterprise in Alabama.

22 "~~(8)~~ ~~INDUSTRIAL OR RESEARCH ENTERPRISE. a. Any trade~~
23 ~~or business described in 1987 Standard Industrial~~
24 ~~Classification Industry Group Number 0724, Major Groups 20 to~~
25 ~~39, inclusive, 50 and 51, Industrial Group Number 737, and~~

1 ~~Industry Numbers 4613, 8731, 8733, and 8734, as set forth in~~
 2 ~~the Standard Industrial Classification Manual published by the~~
 3 ~~United States Government Office of Management and Budget.~~

4 "(10) INDUSTRIAL OR RESEARCH ENTERPRISE

5 "a. Any trade or business described in the 2007
 6 North American Industry Classification System, promulgated by
 7 the Executive Office of the President of the United States,
 8 Office of Management and Budget, Sectors 31 (other than
 9 National Industry 311811), 32, and 33; Subsectors 423, 424,
 10 511, and 927; Industry Groups 5417, 5415, and 5182 (without
 11 regard to the premise that data processing and related
 12 services be performed in conjunction with a third-party);
 13 Industries 11331 and 48691; and National Industries 115111,
 14 517110, 541380, and 561422 (other than establishments that
 15 originate telephone calls) and includes such trades and
 16 businesses as may be hereafter reclassified in any subsequent
 17 publication of the North American Industry Classification
 18 System or other industry classification system developed in
 19 conjunction with the United States Department of Commerce, or
 20 any process or treatment facility which recycles, reclaims, or
 21 converts any materials, which include solids, liquids, or
 22 gases, to a reusable product.

23 "b. With respect to abatements granted in accordance
 24 with Section 40-9B-9, and only with respect to such
 25 abatements, "industrial or research enterprise" means any

1 trade or business described in the ~~1997~~2007 North American
2 Industry Classification System within Subsector 493
3 (Warehousing and Storage), Industry Number 488310 (Port and
4 Harbor Operations), or Industry Number 488320 (Marine Cargo
5 Handling), when such trade or business is conducted on
6 premises in which the Alabama State Port Authority has an
7 ownership, leasehold, or other possessory interest and such
8 premises are used as part of the operations of the Alabama
9 State Port Authority.

10 "c. "Industrial or research enterprise" includes the
11 above-described trades and business and any others as may
12 hereafter be reclassified in any subsequent publication of the
13 NAICS or similar industry classification system developed in
14 conjunction with the United States Department of Commerce or
15 Office of Management and Budget.

16 "d. "Industrial or research enterprise" also
17 includes any underground natural gas storage facility which is
18 located in the Gulf Opportunity Zone, as that phrase is
19 defined in the Gulf Opportunity Zone Act of 2005, developed
20 from existing geologic reservoirs, including, without
21 limitation, salt domes, and placed in service on or before
22 December 31, 2013.

23 "e. "Industrial or research enterprise" also
24 includes any plant, property, or facility that meets both of
25 the following:

1 "1. It produces electricity from:

2 "(i) Alternative energy resources and has capital
3 costs of at least one hundred million dollars (\$100,000,000);
4 or

5 "(ii) Hydropower production and has capital costs of
6 at least five million dollars (\$5,000,000).

7 "2. All or a portion of the plant, property, or
8 facility is owned by one or more of the following: a utility
9 described in Section 37-4-1(7)a., an entity organized under
10 the provisions of Chapter 6 of Title 37, or an authority both
11 organized and existing pursuant to the provisions of Chapter
12 50A of Title 11 and subject to the payments required to be
13 made in lieu of ad valorem, sales, use, license, and severance
14 taxes imposed by Section 11-50A-7, or an entity in which one
15 or more of the foregoing owns an interest.

16 "f. "Industrial or research enterprise" also
17 includes any headquarters facility.

18 "g. "Industrial or research enterprise" also
19 includes any data processing center.

20 "h. "Industrial or research enterprise" also
21 includes any research and development facility.

22 "i. "Industrial or research enterprise" also
23 includes any renewable energy facility.

24 "(911) MAJOR ADDITION. Any addition to an existing
25 industrial development property that equals the lesser of: 30

1 percent of the original cost of the industrial development
2 property or two million dollars (\$2,000,000). For purposes of
3 this subsection, the original cost of existing industrial
4 development property shall be the amount of industrial
5 development property with respect to which an abatement was
6 granted under this chapter when the property was constructed,
7 or if the existing industrial development property was
8 constructed before January 1, 1993, the maximum amount that
9 would have been allowed if the provisions of this chapter had
10 applied at the time it was constructed. Only property that
11 constitutes industrial development property shall be taken
12 into account in making the determination in the previous
13 sentence. Major addition shall include any addition costing at
14 least two million dollars (\$2,000,000) which constitutes an
15 industrial or research enterprise, regardless of whether added
16 to an existing industrial development property.

17 " ~~(1012)~~ MAXIMUM EXEMPTION PERIOD. Except as provided
18 in Section 40-9B-11, a period equal to the shorter of:

19 "a. Ten years from and after: 1. The date of initial
20 issuance by a county, city, or public authority of bonds to
21 finance any costs of a private use property, or 2. If no such
22 bonds are ever issued, the later of: (i) The date on which
23 title to the property was acquired by or vested in the county,
24 city, or public authority, or (ii) The date on which the
25 property is or becomes owned, for federal income tax purposes,

1 by a private user; or b. The weighted average economic life of
 2 the assets comprising such property, determined consistently
 3 with the provisions of 26 U.S.C. § 147(b) and measured from
 4 the date such property is placed in service.

5 "~~11~~13) MORTGAGE AND RECORDING TAXES. The taxes
 6 imposed by Chapter 22 of this title.

7 "~~12~~14) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem
 8 taxes, or payments required to be made in lieu thereof,
 9 imposed by the state, counties, municipalities, and other
 10 taxing jurisdictions of Alabama that are not required to be
 11 used for educational purposes or for capital improvements for
 12 education.

13 "~~13~~15) PERSON. Includes any individual,
 14 partnership, trust, estate, or corporation. .

15 "~~14~~16) PRIVATE USER. Any individual, partnership,
 16 or corporation organized for profit that is or will be treated
 17 as the owner of private use property for federal income tax
 18 purposes, any entity organized under Chapter 6 of Title 37,
 19 and any authority both organized and existing pursuant to
 20 Chapter 50A of Title 11 and subject to the payments required
 21 to be made in lieu of ad valorem, sales, use, license, and
 22 severance taxes imposed by Section 11-50A-7.

23 "~~15~~17) PRIVATE USE INDUSTRIAL PROPERTY. Private use
 24 property that also constitutes industrial development
 25 property.

1 "~~1618~~) PRIVATE USE PROPERTY. Any real and/or
 2 personal property which is or will be treated as owned by a
 3 private user for federal income tax purposes even though title
 4 may be held by a public authority or municipal or county
 5 government; any real and/or personal property which is owned
 6 by any entity organized under Chapter 6 of Title 37; and any
 7 real and/or personal property which is owned by any authority
 8 both organized and existing pursuant to Chapter 50A of Title
 9 11, and subject to the payments required to be made in lieu of
 10 ad valorem, sales, use, license, and severance taxes imposed
 11 by Section 11-50A-7.

12 "~~1719~~) PUBLIC AUTHORITY. A corporation created for
 13 public purposes pursuant to a provision of the Constitution of
 14 Alabama of 1901, or a general or local law that authorized it
 15 to issue bonds, the interest on which is exempt from the
 16 Alabama income tax, as in effect on May 21, 1992.

17 "~~1820~~) PUBLIC INDUSTRIAL AUTHORITY. A public
 18 authority authorized to issue bonds to acquire, construct,
 19 equip, or finance industrial development property.

20 "(21) RENEWABLE ENERGY FACILITY. Any plant,
 21 property, or facility that either:

22 "1. Produces electricity or natural gas, in whole or
 23 in part, from biofuels as such term is defined in Section
 24 2-2-90(c)(2) or from renewable energy resources as such term
 25 is defined in Section 40-18-1(30) with the exception that

1 hydropower production shall be excluded from such definition;
2 or

3 "2. Produces biofuel as such term is defined in
4 Section 2-2-90(c)(2).

5 "(22) RESEARCH AND DEVELOPMENT FACILITY. An
6 establishment engaged in conducting original investigations
7 undertaken on a systematic basis to gain new knowledge and/or
8 applying research findings or other scientific knowledge to
9 create new or significantly improved products or processes.

10 "(1923) STATEMENT OF INTENT. A written statement of
11 intent to claim an abatement provided in this chapter, or to
12 petition for local tax abatement, relating to an industrial or
13 research enterprise described in paragraph e. of subdivision
14 (810) of this subsection that is filed with the Department of
15 Revenue at any time prior to the date on which the industrial
16 or research enterprise described in paragraph e. of
17 subdivision (810) of this subsection is placed in service in
18 accordance with such procedures and on such form or forms as
19 may be prescribed by the Department of Revenue. Such statement
20 of intent shall contain a description of the industrial or
21 research enterprise described in paragraph e. of subdivision
22 (810) of this subsection; the date on which the acquisition,
23 construction, installation, or equipping of the industrial or
24 research enterprise described in paragraph e. of subdivision
25 (810) of this subsection was commenced or is expected to

1 commence; the actual or, if not known, the estimated capital
 2 costs of the industrial or research enterprise described in
 3 paragraph e. of subdivision (~~§10~~) of this subsection; the
 4 number of new employees to be employed at the industrial or
 5 research enterprise described in paragraph e. of subdivision
 6 (~~§10~~) of this subsection; and any other information required
 7 by the Department of Revenue.

8 "(b) The abatements of ad valorem taxes, and
 9 payments in lieu thereof, allowed by amendments to this
 10 section by Act 2008-275 shall become effective for projects
 11 for which statements of intent are filed after December 31,
 12 2011. No ad valorem taxes, or payments in lieu thereof, shall
 13 be abated for periods prior to January 1, 2012. The other
 14 abatements allowed by amendments made to this section by Act
 15 2008-275 shall become effective after December 31, 2011.

16 "§40-18-190.

17 "(a) The following terms shall have the following
 18 meanings, respectively, when used in this article unless the
 19 context clearly requires otherwise:

20 "(1) BASE WAGE REQUIREMENT.

21 "a. For qualifying projects in which an investing
 22 company files a written statement of intent (Form INT) with
 23 the Department on or before the effective date of Act 2009- ,
 24 "base wage requirement" means ~~Either~~ either an average hourly
 25 wage of not less than eight dollars (\$8) per hour or an

1 average total compensation of not less than ten dollars (\$10)
2 per hour, including benefits.

3 "b. For qualifying projects in that are not located
4 in a favored geographic area and for which an investing
5 company files a written statement of intent (Form INT) with
6 the Department after the effective date of Act 2009-, "base
7 wage requirement" means an average hourly wage, inclusive of
8 all employees in Alabama, of not less than the lesser of
9 fifteen dollars (\$15) per hour (indexed annually in accordance
10 with the manner provided in Section 25-5-68) or the average
11 hourly wage of the county where the qualifying project is
12 located (as reported annually by the Department of Industrial
13 Relations), both excluding benefits.

14 "c. For qualifying projects that are located in a
15 favored geographic area and for which an investing company
16 files a written statement of intent (Form INT) with the
17 Department after the effective date of Act 2009-, "base wage
18 requirement" means an average hourly wage, inclusive of all
19 employees in Alabama, of not less than the lesser of twelve
20 dollars (\$12) per hour (indexed annually in accordance with
21 the manner provided in Section 25-5-68) or the average hourly
22 wage of the county where the qualifying project is located (as
23 reported annually by the Department of Industrial Relations),
24 both excluding benefits.

1 "~~c.~~d. Notwithstanding the foregoing, wages of direct
2 processors of agriculture food products shall be subject to
3 the local labor market. In the event that reliable local labor
4 market statistics are not available, the department shall, by
5 regulation or ruling, establish a source of wage information
6 that best represents the average hourly wage rate in Alabama
7 for direct processors of agriculture food products.

8 "(2) CAPITAL COSTS. All costs and expenses incurred
9 by one or more investing companies in connection with the
10 acquisition, construction, installation and equipping of a
11 qualifying project during the period commencing with the date
12 on which such acquisition, construction, installation and
13 equipping commences and ending on the date on which the
14 qualifying project is placed in service, including, without
15 limitation all of the following:

16 "a. The costs of acquiring, constructing,
17 installing, equipping, and financing a qualifying project,
18 including all obligations incurred for labor and to
19 contractors, subcontractors, builders, and materialmen.

20 "b. The costs of acquiring land or rights in land
21 and any cost incidental thereto, including recording fees.

22 "c. The costs of contract bonds and of insurance of
23 all kinds that may be required or necessary during the
24 acquisition, construction, or installation of a qualifying
25 project.

1 "d. The costs of architectural and engineering
 2 services, including test borings, surveys, estimates, plans
 3 and specifications, preliminary investigations, environmental
 4 mitigation and supervision of construction, as well as for the
 5 performance of all the duties required by or consequent upon
 6 the acquisition, construction, and installation of a
 7 qualifying project.

8 "e. The costs associated with installation of
 9 fixtures and equipment; surveys, including archaeological and
 10 environmental surveys; site tests and inspections; subsurface
 11 site work; excavation; removal of structures, roadways,
 12 cemeteries, and other surface obstructions; filling, grading,
 13 paving and provisions for drainage, storm water retention,
 14 installation of utilities, including water, sewer, sewage
 15 treatment, gas, electricity, communications, and similar
 16 facilities; off-site construction of utility extensions to the
 17 boundaries of the property.

18 "f. All other costs of a nature comparable to those
 19 described, including, without limitation, all project costs
 20 which are required to be capitalized for federal income tax
 21 purposes pursuant to 26 U.S.C. § 263A.

22 "g. Costs otherwise defined as capital costs that
 23 are incurred by the investing company where the investing
 24 company is the lessee under a lease that: (1) has a term of
 25 not less than five years, and (2) is characterized as a

1 capital lease for federal income tax purposes; provided, that
2 if the project is a headquarters facility, the lease may be
3 characterized as an operating lease for federal income tax
4 purposes in which event capital costs shall include the net
5 present value of the payments made by the investing company
6 under the lease computed using the applicable federal rate for
7 the month in which the qualifying project is placed in service
8 and for the term most closely approximating the term of the
9 lease. Capital costs shall not include property owned or
10 leased by the investing company or a related party before the
11 commencement of the acquisition, construction, installation or
12 equipping of the qualifying project unless such property was
13 physically located outside the state for a period of at least
14 one year prior to the date on which the qualifying project was
15 placed in service.

16 "h. Costs either paid or incurred by (i) a public
17 industrial development board or authority, city, or county, or
18 other public corporation or political subdivision (a "public
19 entity") for the benefit of a qualifying project where such
20 costs are treated as costs paid by an investing company with
21 respect to the qualifying project for federal income tax
22 purposes (such costs shall not include amounts contributed by
23 a public entity to a qualifying project as a capital
24 contribution or gift except to the extent that an investing
25 company has cost basis in the contribution or gift for federal

1 income tax purposes); or (ii) a related party to an investing
2 company to the extent such costs are included in or taken into
3 account in determining the investing company's federal income
4 tax basis in the qualifying project, whether or not incurred
5 by an investing company.

6 "(3) CAPITAL CREDIT. An annual amount equal to up to
7 five percent of the capital costs of the qualifying project,
8 such amount to be credited or allowed in accordance with
9 Section 40-18-194 and Section 40-18-195 hereof and other
10 provisions of law, against the state income tax or financial
11 institution excise tax, as provided in Section 40-18-194,
12 liability generated by or arising out of the qualifying
13 project in each of the 20 years commencing with the year
14 during which the qualifying project is placed in service and
15 continuing for 19 consecutive years thereafter.

16 "(4) DATA PROCESSING CENTER. An establishment
17 engaged in the provision of complete processing and
18 specialized reports from data, the provision of automated data
19 processing and data entry services, the provision of an
20 infrastructure for hosting or data processing services, the
21 provision of specialized hosting activities, the provision of
22 application service provisioning, the provision of general
23 time-share mainframe facilities, or some combination of the
24 foregoing, without regard to whether any other activities are
25 conducted at the establishment.

1 "(~~4~~5) DEPARTMENT. The Alabama Department of Revenue.

2 "(~~5~~6) FAVORED GEOGRAPHIC AREA. Either of the

3 following:

4 "a. Any area designated or created as an enterprise
5 zone by law or that is governed by the Alabama Enterprise Zone
6 Act.

7 "b. 1. Any Alabama county which is considered to be
8 less developed. A county is considered to be less developed if
9 it has been found to be less developed by the Alabama
10 Department of Industrial Relations using the most current data
11 available from the United States Departments of Labor or
12 Commerce, the United States Bureau of the Census, or any other
13 federal or state agency, and which finding shall be made
14 immediately upon passage of Act 2001-965 and not later than
15 January 1 of each year thereafter.

16 "2. A county shall be found to be less developed if
17 it is ranked as the forty-fifth through sixty-seventh county,
18 inclusive, using the following factors:

19 "(i) Percent change in population over the most
20 recent five-year period.

21 "(ii) Personal per capita income in the last
22 calendar year for which data are available.

23 "(iii) The average percent employed over the last 12
24 months for which data are available.

1 "3. The factors used in ranking counties will be
2 weighted in the following manner:

3 "(i) Percent change in population (25 percent).

4 "(ii) Personal per capita income (25 percent).

5 "(iii) Average percent employed (50 percent).

6 "~~67~~ HEADQUARTERS FACILITIES.

7 "a. For qualifying projects in which an investing
8 company files a written statement of intent (Form INT) with
9 the Department on or before the effective date of Act 2009- ,
10 "headquarters facilities" means a facility which will serve
11 as the national, regional or state headquarters for an
12 investing company that conducts significant business
13 operations outside the state and will serve as the principal
14 office of the principal operating officer of the qualifying
15 project. For purposes of this Article 7, the term "principal
16 operating officer" is defined as the person with chief
17 responsibility for the daily business operations of the
18 qualifying project.

19 "b. For qualifying projects in which an investing
20 company files a written statement of intent (Form INT) with
21 the Department after the effective date of Act 2009- ,
22 "headquarters facilities" means any trade or business
23 described in the 2007 North American Industry Classification
24 System, promulgated by the Executive Office of the President

1 of the United States, Office of Management and Budget,
 2 National Industry 551114.

3 " (78) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.
 4 Any trade or business described in the ~~1997~~2007 North American
 5 Industry Classification System, promulgated by the Executive
 6 Office of the President of the United States, Office of
 7 Management and Budget, Sectors 31 (other than National
 8 Industry 311811), 32, 33, and 42; subsector 511; Industry
 9 Groups 5142 and 5415; Industries 54138, 54171; and National
 10 Industry 514191 and 33; Subsectors 423, 424, 511, and 927;
 11 Industry Groups 5417, 5415, and 5182 (without regard to the
 12 premise that data processing and related services be performed
 13 in conjunction with a third-party); Industries 11331 and
 14 48691; and National Industries 115111, 517110, 541380, and
 15 561422 (other than establishments that originate telephone
 16 calls) and includes such trades and businesses as may be
 17 hereafter reclassified in any subsequent publication of the
 18 North American Industry Classification System or other
 19 industry classification system developed in conjunction with
 20 the United States Department of Commerce, or any process or
 21 treatment facility which recycles, reclaims, or converts
 22 materials, which include solids, liquids, or gases, to a
 23 reusable product.

24 " (89) INVESTING COMPANY. Any corporation,
 25 partnership, limited liability company, proprietorship, trust

1 or other business entity, regardless of form, making a
2 qualified investment.

3 "~~(910)~~ NEW EMPLOYEES. Those persons who have not
4 been previously employed at the site on which the qualifying
5 project is or will be located or by an investing company or
6 companies in the state; will be employed full-time at the
7 qualifying project; and will be subject to the personal income
8 tax imposed by Section 40-18-2, upon commencement of
9 employment at the qualifying project.

10 "~~(1011)~~ PROJECT. Any land, building or other
11 improvement, and all real and personal properties deemed
12 necessary or useful in connection therewith, whether or not
13 previously in existence, located or to be located in the
14 state.

15 "~~(1112)~~ QUALIFYING INVESTMENT. The undertaking by
16 one or more investing companies of a qualifying project.

17 "~~(1213)~~ QUALIFYING PROJECT. A project to be
18 sponsored or undertaken by one or more investing companies
19 meeting any one of the following requirements:

20 "a. A project the capital costs of which are not
21 less than two million dollars (\$2,000,000), and at which the
22 predominant trade or business activity conducted will
23 constitute industrial, warehousing, or research activity.

24 "b. A small business addition the capital costs of
25 which are not less than one million dollars (\$1,000,000), and

1 at which the predominant trade or business activity conducted
2 will constitute industrial, warehousing, or research activity.

3 "c. A headquarters facility the capital costs of
4 which are not less than two million dollars (\$2,000,000) at
5 which the predominant trade or business activity conducted
6 will not be the production of electricity.

7 "d. A project located in a favored geographic area
8 the capital costs of which are not less than five hundred
9 thousand dollars (\$500,000), and at which the predominant
10 trade or business activity conducted will constitute
11 industrial, warehousing, or research activity.

12 "e. A project owned by a utility described in
13 Section 37-4-1(7)a., or owned by an investing company which is
14 itself owned by a utility, the capital costs of which are not
15 less than the following:

16 "1. One hundred million dollars (\$100,000,000), if
17 the predominant trade or business activity conducted will be
18 the production of electricity from alternative energy
19 resources.

20 "2. Five million dollars (\$5,000,000), if the
21 predominant trade or business activity conducted will be the
22 production of electricity from hydropower production.

23 "f. A data processing center the capital costs of
24 which are not less than the following:

1 "1. Two million dollars (\$2,000,000), if the data
2 processing center is not located in a favored geographic area.

3 "2. Five hundred thousand dollars (\$500,000), if the
4 data processing center is located in a favored geographic
5 area.

6 "g. A research and development facility the capital
7 costs of which are not less than the following:

8 "1. Two million dollars (\$2,000,000), if the
9 research and development facility is not located in a favored
10 geographic area.

11 "2. Five hundred thousand dollars (\$500,000), if the
12 research and development facility is located in a favored
13 geographic area.

14 "h. A renewable energy facility the capital costs of
15 which are not less than the following:

16 "1. Two million dollars (\$2,000,000), if the
17 renewable energy facility is not located in a favored
18 geographic area.

19 "2. Five hundred thousand dollars (\$500,000), if the
20 renewable energy facility is located in a favored geographic
21 area.

22 "~~1314~~ RELATED PARTY. A person or entity that bears
23 a relationship to an investing company described in Section
24 267(b), (c), or (e) of the Internal Revenue Code of 1986, as
25 amended.

1 "15) RENEWABLE ENERGY FACILITY. Any plant,
2 property, or facility that either:

3 "1. Produces electricity or natural gas, in whole or
4 in part, from biofuels as such term is defined in Section
5 2-2-90(c)(2) or from renewable energy resources as such term
6 is defined in Section 40-18-1(30) with the exception that
7 hydropower production shall be excluded from such definition;
8 or

9 "2. Produces biofuel as such term is defined in
10 Section 2-2-90(c)(2).

11 "16) RESEARCH AND DEVELOPMENT FACILITY. An
12 establishment engaged in conducting original investigations
13 undertaken on a systematic basis to gain new knowledge and/or
14 applying research findings or other scientific knowledge to
15 create new or significantly improved products or processes.

16 "17) SMALL BUSINESS ADDITION. Any land, building
17 or other improvement, and all real and personal properties
18 deemed necessary or useful in connection therewith, whether or
19 not previously in existence, to be used as a part of any
20 existing facility of a business located in the state that,
21 prior to the date on which the addition is placed in service,
22 had 100 or fewer full-time employees.

23 "18) TAX YEAR. The applicable taxable year as the
24 term is defined in Section 40-18-1(3336).

1 "(~~619~~) 1993 ACT. Act No. 93-851, H. 27 and Act No.
2 93-852, H. 83 adopted at the 1993 First Special Session of the
3 Legislature of Alabama, as amended by Act No. 94-370, S. 559
4 adopted at the 1994 Regular Session of the Legislature of
5 Alabama.

6 "(b) The amendments made to this section by Act
7 2008-275 shall be effective for tax years and periods
8 beginning after December 31, 2011.

9 "§40-18-193.

10 "(a) It shall be a condition to the receipt of a
11 capital credit that ~~either of the following occur:~~

12 "(1) For a qualifying project described in Section
13 40-18-190(a)(13)c or f, not less than 50 jobs for new
14 employees at the qualifying project be provided commencing
15 with the date which is not later than one year after the
16 qualifying project is placed in service and that the average
17 wages for all new employees at the qualifying project be not
18 less than the base wage requirement by the date which is not
19 later than one year after the qualifying project is placed in
20 service and during each year during which all or any part of
21 the capital credit is available with respect to the
22 qualifying project.

23 "(2) For any qualifying project other than a
24 qualifying project described in Sections 40-18-190(a)(13)c or
25 f, either of the following occur:

1 "~~(1)~~a. Not less than 20 jobs for new employees at a
2 qualifying project except as otherwise provided in this
3 ~~section~~subdivision and commencing with the date which is not
4 later than one year after the qualifying project is placed in
5 service and that the average wages for all new employees at
6 the qualifying project be not less than the base wage
7 requirement by the date which is not later than one year after
8 the qualifying project is placed in service and during each
9 year during which all or any part of the capital credit is
10 available with respect to the qualifying project.

11 "~~(2)~~b. Not less than 15 jobs for new employees at
12 the qualifying project which is a small business addition be
13 provided commencing with the date which is not later than one
14 year after the qualifying project is placed in service and
15 that the average wages for all new employees at the qualifying
16 project be not less than the base wage requirement by the date
17 which is not later than one year after the qualifying project
18 is placed in service and during each year during which all or
19 any part of the capital credit is available with respect to
20 the qualifying project.

21 "~~(3)~~c. Not less than five jobs for new employees at
22 the qualifying project which is located in a favored
23 geographic area and commencing with the date which is not
24 later than one year after the qualifying project is placed in
25 service and that the average wages for all new employees at

1 the qualifying project be not less than the base wage, as
2 defined in Section 40-18-190(a) (1), requirement by the date
3 which is not later than one year after the qualifying project
4 is placed in service and during each year during which all or
5 part of the capital credit is available with respect to the
6 qualifying project.

7 "If an investing company closes or reduces its level
8 of employment at an existing facility in this state and within
9 two years following the closing or reduction in its level of
10 employment places a qualifying project in service, only the
11 number of new employees in excess of the number of employees
12 who worked at the existing facility at the time of the closure
13 or prior to the reduction in employment shall be deemed to be
14 new employees for purposes of this section.

15 "(b) The Legislature recognizes that one or more
16 entities may enter into a joint venture in the form of a
17 limited liability company, partnership, or other form of
18 business entity in connection with a qualifying project. It is
19 the intent of this article that the requirements of this
20 article respecting minimum capital costs and employment be
21 applied to the qualifying project and that the capital credit
22 be available and granted to those entities liable for or
23 against which the state income tax is allocated or assessed
24 with respect to the income generated by or arising out of the
25 qualifying project. It shall not be a requirement of this

1 article that the entity employing any new employees be the
2 same entity entitled to receive the capital credit so long as
3 the requirements of capital costs and new employees are
4 implemented and maintained with respect to the qualifying
5 project.

6 "(c) A change of ownership or assignment of interest
7 in any qualifying project shall not qualify the qualifying
8 project or any taxpayer to receive any additional capital
9 credits, and the purchaser, assignee, or successor of the
10 qualifying project or interests therein shall be entitled to
11 the capital credit upon the same conditions and for the same
12 period as the investing company or companies originally
13 entitled to the capital credit.

14 "(d) The Legislature recognizes that while certain
15 periods specified in this article with respect to the capital
16 credit are measured by calendar years it will be necessary for
17 the capital credit to be applied with respect to the tax years
18 of the recipients of the capital credit. Accordingly, the
19 department is hereby authorized to adopt regulations to
20 provide that the capital credit may be allocated to the tax
21 years of the recipient of the capital credit, including the
22 method of determining the pro rata amount of capital credit,
23 if any, available where the tax year of the recipient of the
24 capital credit will end subsequent to the end of any calendar
25 year period specified in this article.

1 "(e) A company shall be considered to have met the
2 employment and wage requirements for the portion of the year
3 following the date upon which such requirements are first met
4 and for each full year thereafter (such portion of a year and
5 each full year thereafter during the 20 year credit period is
6 hereinafter referred to as a "compliance year") if the
7 employment requirement is satisfied for at least 11/12 of each
8 compliance year and the wage requirement is met based on an
9 average determined over each compliance year.

10 "(f) (1) Any investing company that meets the
11 employment and wage requirements of this section by a date
12 which is not later than one year after the date on which the
13 qualifying project is placed in service, but fails to meet
14 such requirements in any subsequent compliance year, may still
15 claim the capital credit for each compliance year in which
16 such investing company again meets the employment and wage
17 requirements of this section. In no event, however, shall an
18 investing company be able to claim a capital credit in a
19 compliance year beginning: (i) after the third compliance year
20 (whether or not consecutive) in which the investing company
21 fails to meet the employment and wage requirements of this
22 section; or (ii) more than nineteen (19) years after the year
23 in which the qualifying project is first placed in service.

24 "(2) Any investing company that files a written
25 statement of intent (Form INT) with the Department after the

1 effective date of Act 2009- and that meets the employment and
 2 wage requirements of this section by a date which is not later
 3 than one year after the date on which the qualifying project
 4 is placed in service, but fails to meet such requirements in
 5 any subsequent compliance year, shall forfeit a percentage of
 6 the capital credits claimed in the prior five years. The
 7 forfeiture shall equal 100 percent of the capital credits
 8 claimed in the year immediately preceding the year in which
 9 the investing company fails to maintain the employment and
 10 wage requirements of this section. The forfeiture percentage
 11 shall be reduced by 20 percent for each successive prior year
 12 in the five year forfeiture period. The forfeiture of capital
 13 credits shall be treated in the same manner as the imposition
 14 of the tax imposed by this chapter and shall be payable by the
 15 investing company on the fifteenth day of the third month
 16 following the close of the year in which the investing company
 17 failed to meet the employment and wage requirements of this
 18 section.

19 "§40-18-194.

20 "(a) The Legislature recognizes that a substantial
 21 number of businesses are organized as limited liability
 22 companies, partnerships, and other types of business entities
 23 and that certain business entities, organized as corporations,
 24 elect to be treated as "S" corporations under federal and
 25 state tax laws, and that it is essential that the capital

1 credit amount shall be available on a pass-through basis in
 2 the manner hereinafter provided.

3 "(b) Each investing company, or its shareholders,
 4 partners, members, owners, or beneficiaries shall be entitled
 5 to the capital credit for each tax year of an investing
 6 company with respect to which a capital credit is provided
 7 pursuant to this article. The capital credit shall be allowed
 8 as follows:

9 "(1) The owner of an investing company which is a
 10 proprietorship shall receive a credit against the individual
 11 income tax levied by Section 40-18-5 that otherwise would be
 12 owed to the state in any year by the owner with respect to the
 13 income of the investing company generated by or arising out of
 14 the qualifying project.

15 "(2) An investing company which is an Alabama C
 16 corporation as defined in Section 40-18-160, or which is an
 17 Alabama S corporation and which is subject to taxation under
 18 Section 40-18-174, or Section 40-18-175, shall receive a
 19 credit against the corporate income tax levied by Section
 20 40-18-31 or by Section 40-18-174 or Section 40-18-175, that
 21 otherwise would be owed to the state in any year by the
 22 investing company with respect to the income generated by or
 23 arising out of the qualifying project.

24 "(3) The shareholders of an investing company which
 25 is an Alabama S corporation as defined in Section 40-18-160,

1 and whose taxable income is subject to determination under
2 Section 40-18-161, each shall receive a credit against the
3 individual income tax levied by Section 40-18-5 that otherwise
4 would be owed to the state in any year by each shareholder of
5 the investing company with respect to income of the investing
6 company generated by or arising out of the qualifying project.

7 "(4) The partners, members, or owners of an
8 investing company, the income of which is subject to taxation
9 under Section 40-18-24, each shall receive a credit against
10 the corporate income tax levied by Section 40-18-31, or
11 against the individual income tax levied by Section 40-18-5,
12 whichever is applicable to each such partner, member, or owner
13 that otherwise would be owed to the state in any year by each
14 partner, member, or owner of the investing company with
15 respect to income of the investing company generated by or
16 arising out of the qualifying project.

17 "(5) An investing company which is a trust or estate
18 having income subject to taxation under Section 40-18-25(c)
19 shall receive a credit against the income tax levied by
20 Section 40-18-5 that otherwise would be owed to the state in
21 any year by the investing company on the income generated by
22 or arising out of the qualifying project.

23 "(6) The beneficiaries of an investing company which
24 is a trust or estate the income of which is subject to
25 taxation under Section 40-18-25(d) each shall receive a credit

1 against the corporate income tax levied by Section 40-18-31,
2 or against the individual income tax levied by Section
3 40-18-5, whichever is applicable to each such beneficiary,
4 that otherwise would be owed to the state in any year by each
5 beneficiary of the investing company with respect to income of
6 the investing company generated by or arising out of the
7 qualifying project.

8 "(7) A shareholder, partner, member, owner, or
9 beneficiary which is eligible to receive a credit under
10 subdivision (3), (4), or (6) of this subsection and which is
11 an Alabama S corporation, or which has income which is subject
12 to taxation under Section 40-18-24 or Section 40-18-25(d),
13 solely for purposes of the application of this subsection,
14 shall be treated as though the shareholder, partner, member,
15 owner, or beneficiary were also an investing company.

16 "(8)a. An investing company which is a financial
17 institution as defined in Section 40-16-1 shall receive a
18 credit against the financial institution excise tax levied by
19 Section 40-16-4 that otherwise would be owed to the state in
20 any year by the investing company with respect to the income
21 generated by or arising out of the qualifying project . If a
22 financial institution is a shareholder, partner, member,
23 owner, beneficiary, or other equity participant in an
24 investing company, such financial institution shall receive
25 the credit against the financial institution excise tax levied

1 ~~by Section 40-16-4 on a pass-through basis, and rules similar~~
2 ~~to those in paragraphs (1), (2), (3), (4), (5), (6), and (7)~~
3 ~~of this subsection (b) shall be applicable. which is a data~~
4 ~~processing center, is a headquarters facility, or is described~~
5 ~~in the 2007 North American Industry Classification System~~
6 ~~National Industry 561422 (other than establishments that~~
7 ~~originate telephone calls). To receive the capital credit~~
8 ~~authorized by this paragraph (8)a., Section 40-18-193 shall be~~
9 ~~complied with. Further, the financial institution must be the~~
10 ~~investing company or it must own, directly or indirectly, at~~
11 ~~least 50 percent of the investing company. If the financial~~
12 ~~institution is a shareholder, partner, member, owner, or~~
13 ~~beneficiary of an investing company which is not itself~~
14 ~~subject to taxation, the financial institution shall be~~
15 ~~entitled to a capital credit corresponding to its relative~~
16 ~~ownership interest in the investing company, subject to the 50~~
17 ~~percent ownership requirement of the immediately preceding~~
18 ~~sentence.~~

19 "b. In making the report required by Section
20 40-16-6(d), a financial institution receiving the capital
21 credit authorized in paragraph (8)a. shall not take into
22 account the qualifying project.

23 "(89) The capital credit allowed under this
24 subsection for any tax year of an investing company shall not
25 exceed the aggregate amount which otherwise would be due from

1 the investing company, its shareholders, partners, members,
2 owners, or beneficiaries to the state in tax with respect to
3 the income of the investing company generated by or arising
4 out of the qualifying project, determined after the
5 application of all other deductions, losses, or credits
6 permitted under Titles 40 and 41, for the taxable year, and
7 determined by applying the maximum rate applicable to
8 individuals under Section 40-18-5, or the rate applicable to
9 corporations under Section 40-18-31, or the rate applicable to
10 financial institutions under Section 40-16-4, as the case may
11 be. Notwithstanding the foregoing, the capital credit allowed
12 under this subsection shall not exceed 60 percent of the
13 aggregate amount which would otherwise be due from the
14 investing company, in the case of a qualifying project for the
15 production of electricity from coal gasification or
16 liquefaction or advanced fossil-based generation, as such
17 terms are defined in Section 40-18-1, or hydropower
18 production, or 80 percent of the aggregate amount which would
19 otherwise be due, in the case of a qualifying project
20 described in Section 40-18-190(a)(13)e which produces for the
21 production of electricity from any other type of alternative
22 energy resource.

23 " (910) In no event may any amount described in this
24 subsection be carried forward or back by any investing

1 company, shareholders, partners, members, owners, or
2 beneficiaries with respect to a prior or subsequent year.

3 "~~(f)~~(11) Any shareholder, partner, member, owner, or
4 beneficiary of an investing company may elect annually to use
5 his or her allowable portion of the ~~income~~ tax credit created
6 by this article as a nonrefundable estimated tax payment
7 against his or her individual income tax liability. If a
8 taxpayer makes an annual election to use the aforementioned
9 credit as a nonrefundable estimated payment, the taxpayer
10 shall compute the amount of the credit as though it were a
11 credit, subject to all the requirements and limitations
12 provided by law for the credit, but shall use the amount
13 computed as a nonrefundable estimated payment and shall not
14 use the same amount as a credit. In no event shall this
15 provision be construed to allow the credit or nonrefundable
16 estimated tax payment to expand the 20-year limitation of the
17 credit or estimated tax payment. In no event shall a credit
18 used as nonrefundable estimated payment exceed the amount that
19 would be available if the credit were not used as a
20 nonrefundable estimate payment.

21 "(c) The amendments made to this section by Act
22 2008-275 shall be effective for tax years and periods
23 beginning after December 31, 2011.

24 "§40-18-202.1.

1 "The capital credits authorized by the amendments to
2 Sections 40-18-190 and 40-18-194 by Act 2008-275 shall not be
3 subject to Section 40-18-202. Instead, the capital credits
4 authorized by these amendments shall not be available for new
5 qualifying projects after December 31, 2018, unless the
6 Legislature votes to continue or reinstate the capital credit
7 for new projects after that date. No action or inaction on the
8 part of the Legislature shall reduce, suspend, or disqualify
9 any capital credit in any past or future year with respect to
10 any investing company which files a statement of intent
11 pursuant to Section 40-18-191 on or before December 31, 2018,
12 it being the sole intention of this section that the failure
13 of the Legislature to vote to continue or reinstate the
14 capital credit for new projects after December 31, 2018, shall
15 affect only the availability of the capital credit to new
16 qualifying projects after that date and shall not affect
17 either the qualifying projects which have established their
18 eligibility to receive capital credits under Section 40-18-191
19 on or before December 31, 2018, or any future qualifying
20 expansions to the qualifying projects. ~~For projects placed in
21 service after May 8, 2008, no amount shall be allowed or
22 credited in accordance with Article 7 of Chapter 18 of this
23 title, or Chapter 9B of this title, to the extent that the
24 capital costs are incurred for the production of electricity
25 unless the predominant trade or business activity conducted~~

1 ~~will be the production of electricity from alternative energy~~
2 ~~resources or hydropower production."~~

3 Section 3. As a result of the renumbering of
4 definitions contained in Section 40-9B-3, the Code
5 Commissioner is hereby authorized to change existing
6 references to Sections 40-9B-3(a)(6), (8), and (19) in the
7 following sections (and any other sections which the Code
8 Commissioner deems appropriate):

9 Sections 40-9B-4, 40-9B-9, 40-9B-11, 40-9B-12,
10 40-9D-4, and 40-18-70.

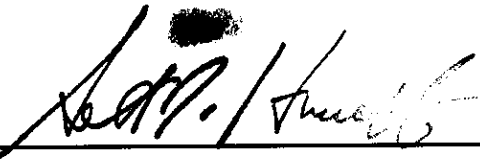
11 Section 4. If a court of competent jurisdiction
12 adjudges invalid or unconstitutional any clause, sentence,
13 paragraph, section, or part of this Act, such judgment or
14 decree shall not affect, impair, invalidate, or nullify the
15 remainder of this Act, but the effect of the decision shall be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

18 Section 5. All laws or parts of laws which conflict
19 with this act are repealed. Specifically, but without
20 limitation, Section 40-18-32, Code of Alabama 1975, is not
21 repealed or amended by this act.

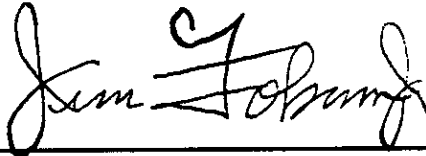
22 Section 6. The provisions of this act shall become
23 effective immediately following its passage and approval by
24 the Governor, or its otherwise becoming law. This act does not
25 repeal or amend the effective date for projects first

1 authorized by Act 2008-275. The provisions of this act shall
2 be effective and shall apply for projects authorized in this
3 act that are first placed in service on or after the effective
4 date of this act.

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Speaker of the House of Representatives



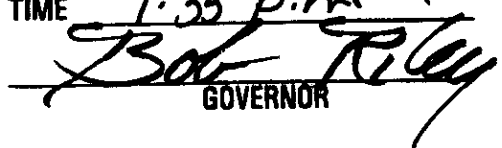
President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 05-MAY-09, as amended.

Greg Pappas
Clerk

Senate	<u>14-MAY-09</u>	Amended and Passed
House	<u>14-MAY-09</u>	Concurred in Senate Amendment

APPROVED May 21, 2009
TIME 1:35 p.m.

GOVERNOR

Alabama Secretary Of State
Act Num....: 2009-722
Bill Num....: H-568
Recv'd 05/21/09 04:19pm JJB