HB568
110373-9
By Representative Knight
RFD: Education Appropriations
First Read: 19-FEB-09
ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature finds that the growth of the "white collar" service economy in Alabama should be addressed. Therefore, it is the intent of the Legislature to offer incentives to new or expanding businesses on an equal basis to new or expanding corporate headquarters, data processing centers (including those of financial institutions and insurance companies), and research and development facilities. Further, the Legislature finds that the growth of renewable energy producers and other types of "green" employers in Alabama should be encouraged. Therefore, it is the intent of the Legislature to offer incentives to new or
expanding businesses on an equal basis to new or expanding
producers of electricity or natural gas from renewable energy
resources or biofuels as well as biofuel producers. The
legislature further finds that an increase in the base wage
requirement for qualifying projects and an index to that wage
requirement will produce positive economic development for the
State.

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

"§40-9B-3.

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

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

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

"(3) CONSTRUCTION RELATED TRANSACTION TAXES. The
transaction taxes imposed by Chapter 23 of this title, or
payments required to be made in lieu thereof, on tangible
personal property and taxable services incorporated into an
industrial development property, the cost of which may be
added to capital account with respect to the property,
determined without regard to any rule which permits
expenditures properly chargeable to capital account to be
treated as current expenses.

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

"(42) EDUCATION TAXES. Ad valorem taxes, or payments
required to be made in lieu thereof, that must, pursuant to
the Constitution of Alabama of 1901, as amended, legislative
act, or the resolution or other action of the governing board
authorizing the tax, be used for educational purposes or for
capital improvements for education and local construction
related transaction taxes levied for educational purposes or
for capital improvements for education.
"(6) HEADQUARTERS FACILITY. Any trade or business described in the 2007 North American Industry Classification System, promulgated by the Executive Office of the President of the United States, Office of Management and Budget, National Industry 551114, at which not less than fifty new jobs are located.

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

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

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

"(80) INDUSTRIAL OR RESEARCH ENTERPRISE. a. Any trade or business described in 1907 Standard Industrial Classification Industry Group Number 0724, Major Groups 20 to 39, inclusive, 50 and 51, Industrial Group Number 737, and
Industry Numbers 4613, 8731, 8732, and 8734, as set forth in
the Standard Industrial Classification Manual published by the
United States Government Office of Management and Budget.

"(10) INDUSTRIAL OR RESEARCH ENTERPRISE

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

"b. With respect to abatements granted in accordance
with Section 40-9B-9, and only with respect to such
abatements, "industrial or research enterprise" means any
trade or business described in the North American Industry Classification System within Subsector 493 (Warehousing and Storage), Industry Number 488310 (Port and Harbor Operations), or Industry Number 488320 (Marine Cargo Handling), when such trade or business is conducted on premises in which the Alabama State Port Authority has an ownership, leasehold, or other possessory interest and such premises are used as part of the operations of the Alabama State Port Authority.

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

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

"e. "Industrial or research enterprise" also includes any plant, property, or facility that meets both of the following:
"1. It produces electricity from:

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

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

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

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

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

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

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

"(911) MAJOR ADDITION. Any addition to an existing industrial development property that equals the lesser of: 30
percent of the original cost of the industrial development property or two million dollars ($2,000,000). For purposes of this subsection, the original cost of existing industrial development property shall be the amount of industrial development property with respect to which an abatement was granted under this chapter when the property was constructed, or if the existing industrial development property was constructed before January 1, 1993, the maximum amount that would have been allowed if the provisions of this chapter had applied at the time it was constructed. Only property that constitutes industrial development property shall be taken into account in making the determination in the previous sentence. Major addition shall include any addition costing at least two million dollars ($2,000,000) which constitutes an industrial or research enterprise, regardless of whether added to an existing industrial development property.

"(a012) MAXIMUM EXEMPTION PERIOD. Except as provided in Section 40-9B-11, a period equal to the shorter of:

a. Ten years from and after: 1. The date of initial issuance by a county, city, or public authority of bonds to finance any costs of a private use property, or 2. If no such bonds are ever issued, the later of: (i) The date on which title to the property was acquired by or vested in the county, city, or public authority, or (ii) The date on which the property is or becomes owned, for federal income tax purposes,
by a private user; or b. The weighted average economic life of
the assets comprising such property, determined consistently
with the provisions of 26 U.S.C. § 147(b) and measured from
the date such property is placed in service.

"(1413) MORTGAGE AND RECORDING TAXES. The taxes
imposed by Chapter 22 of this title.

"(14214) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem
taxes, or payments required to be made in lieu thereof,
imposed by the state, counties, municipalities, and other
taxing jurisdictions of Alabama that are not required to be
used for educational purposes or for capital improvements for
education.

"(14315) PERSON. Includes any individual,
partnership, trust, estate, or corporation.

"(14416) PRIVATE USER. Any individual, partnership,
or corporation organized for profit that is or will be treated
as the owner of private use property for federal income tax
purposes, any entity organized under Chapter 6 of Title 37,
and any authority both organized and existing pursuant to
Chapter 50A of Title 11 and subject to the payments required
to be made in lieu of ad valorem, sales, use, license, and
severance taxes imposed by Section 11-50A-7.

"(1517) PRIVATE USE INDUSTRIAL PROPERTY. Private use
property that also constitutes industrial development
property.
"(618) PRIVATE USE PROPERTY. Any real and/or personal property which is or will be treated as owned by a private user for federal income tax purposes even though title may be held by a public authority or municipal or county government; any real and/or personal property which is owned by any entity organized under Chapter 6 of Title 37; and any real and/or personal property which is owned by any authority both organized and existing pursuant to Chapter 50A of Title 11, and subject to the payments required to be made in lieu of ad valorem, sales, use, license, and severance taxes imposed by Section 11-50A-7.

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

"(820) PUBLIC INDUSTRIAL AUTHORITY. A public authority authorized to issue bonds to acquire, construct, equip, or finance industrial development property.

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

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

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

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

"(1923) STATEMENT OF INTENT. A written statement of intent to claim an abatement provided in this chapter, or to petition for local tax abatement, relating to an industrial or research enterprise described in paragraph e. of subdivision (§10) of this subsection that is filed with the Department of Revenue at any time prior to the date on which the industrial or research enterprise described in paragraph e. of subdivision (§10) of this subsection is placed in service in accordance with such procedures and on such form or forms as may be prescribed by the Department of Revenue. Such statement of intent shall contain a description of the industrial or research enterprise described in paragraph e. of subdivision (§10) of this subsection; the date on which the acquisition, construction, installation, or equipping of the industrial or research enterprise described in paragraph e. of subdivision (§10) of this subsection was commenced or is expected to
commence; the actual or, if not known, the estimated capital costs of the industrial or research enterprise described in paragraph e. of subdivision (§10) of this subsection; the number of new employees to be employed at the industrial or research enterprise described in paragraph e. of subdivision (§10) of this subsection; and any other information required by the Department of Revenue.

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

"§40-18-190.

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

"(1) BASE WAGE REQUIREMENT.

"a. For qualifying projects in which an investing company files a written statement of intent (Form INT) with the Department on or before the effective date of Act 2009--,

"base wage requirement" means either either an average hourly wage of not less than eight dollars ($8) per hour or an
average total compensation of not less than ten dollars ($10) per hour, including benefits.

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

"c. For qualifying projects that are located in a favored geographic area and for which an investing company files a written statement of intent (Form INT) with the Department after the effective date of Act 2009-, "base wage requirement" means an average hourly wage, inclusive of all employees in Alabama, of not less than the lesser of twelve dollars ($12) per hour (indexed annually in accordance with the manner provided in Section 25-5-68) or the average hourly wage of the county where the qualifying project is located (as reported annually by the Department of Industrial Relations), both excluding benefits.
"a. Notwithstanding the foregoing, wages of direct processors of agriculture food products shall be subject to the local labor market. In the event that reliable local labor market statistics are not available, the department shall, by regulation or ruling, establish a source of wage information that best represents the average hourly wage rate in Alabama for direct processors of agriculture food products.

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

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

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

"c. The costs of contract bonds and of insurance of all kinds that may be required or necessary during the acquisition, construction, or installation of a qualifying project.
"d. The costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, and installation of a qualifying project.

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

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

"g. Costs otherwise defined as capital costs that are incurred by the investing company where the investing company is the lessee under a lease that: (1) has a term of not less than five years, and (2) is characterized as a
capital lease for federal income tax purposes; provided, that if the project is a headquarters facility, the lease may be characterized as an operating lease for federal income tax purposes in which event capital costs shall include the net present value of the payments made by the investing company under the lease computed using the applicable federal rate for the month in which the qualifying project is placed in service and for the term most closely approximating the term of the lease. Capital costs shall not include property owned or leased by the investing company or a related party before the commencement of the acquisition, construction, installation or equipping of the qualifying project unless such property was physically located outside the state for a period of at least one year prior to the date on which the qualifying project was placed in service.

"h. Costs either paid or incurred by (i) a public industrial development board or authority, city, or county, or other public corporation or political subdivision (a "public entity") for the benefit of a qualifying project where such costs are treated as costs paid by an investing company with respect to the qualifying project for federal income tax purposes (such costs shall not include amounts contributed by a public entity to a qualifying project as a capital contribution or gift except to the extent that an investing company has cost basis in the contribution or gift for federal
income tax purposes); or (ii) a related party to an investing
company to the extent such costs are included in or taken into
account in determining the investing company's federal income
tax basis in the qualifying project, whether or not incurred
by an investing company.

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

"(4) DATA PROCESSING CENTER. An establishment
engaged in the provision of complete processing and
specialized reports from data, the provision of automated data
processing and data entry services, the provision of an
infrastructure for hosting or data processing services, the
provision of specialized hosting activities, the provision of
application service provisioning, the provision of general
time-share mainframe facilities, or some combination of the
foregoing, without regard to whether any other activities are
conducted at the establishment.
"(45) DEPARTMENT. The Alabama Department of Revenue.

"(56) FAVORED GEOGRAPHIC AREA. Either of the following:

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

"b. 1. Any Alabama county which is considered to be less developed. A county is considered to be less developed if it has been found to be less developed by the Alabama Department of Industrial Relations 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, and which finding shall be made immediately upon passage of Act 2001-965 and not later than January 1 of each year thereafter.

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

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

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

"(iii) The average percent employed over the last 12 months for which data are available.
"3. The factors used in ranking counties will be weighted in the following manner:

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

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

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

"(67) HEADQUARTERS FACILITIES.

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

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

National Industry 551114.

"(78) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.

Any trade or business described in the 1992007 North American Industry Classification System, promulgated by the Executive Office of the President of the United States, Office of Management and Budget, Sectors 31 (other than National Industry 311811), 32, 33, and 42; subsector 511; Industry Groups 5142 and 5415; Industries 54130, 54171, and National Industry 51419 and 33; Subsectors 423, 424, 511, and 927; Industry Groups 5417, 5415, and 5182 (without regard to the premise that data processing and related services be performed in conjunction with a third-party); Industries 11331 and 48691; and National Industries 115111, 517110, 541380, and 561422 (other than establishments that originate telephone calls) and includes such trades and businesses as may be hereafter reclassified in any subsequent publication of the North American Industry Classification System or other industry classification system developed in conjunction with the United States Department of Commerce, or any process or treatment facility which recycles, reclaim, or converts materials, which include solids, liquids, or gases, to a reusable product.

"(79) INVESTING COMPANY. Any corporation, partnership, limited liability company, proprietorship, trust
or other business entity, regardless of form, making a
qualified investment.

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

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

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

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

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

"b. A small business addition the capital costs of
which are not less than one million dollars ($1,000,000), and
at which the predominant trade or business activity conducted
will constitute industrial, warehousing, or research activity.

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

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

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

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

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

"f. A data processing center the capital costs of
which are not less than the following:
"1. Two million dollars ($2,000,000), if the data
processing center is not located in a favored geographic area.

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

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

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

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

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

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

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

"(¶514) RELATED PARTY. A person or entity that bears
a relationship to an investing company described in Section
267(b), (c), or (e) of the Internal Revenue Code of 1986, as
amended.
"(15) RENEWABLE ENERGY FACILITY. Any plant, property, or facility that either:

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

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

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

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

"(18) TAX YEAR. The applicable taxable year as the term is defined in Section 40-18-1(33).

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


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

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

"(2) For any qualifying project other than a qualifying project described in Sections 40-18-190(a)(13)c or f, either of the following occur:
"(1)a. Not less than 20 jobs for new employees at a qualifying project except as otherwise provided in this section and commencing with the date which is not later than one year after the qualifying project is placed in service and that the average wages for all new employees at the qualifying project be not less than the base wage requirement by the date which is not later than one year after the qualifying project is placed in service and during each year during which all or any part of the capital credit is available with respect to the qualifying project.

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

"(3)c. Not less than five jobs for new employees at the qualifying project which is located in a favored geographic area and commencing with the date which is not later than one year after the qualifying project is placed in service and that the average wages for all new employees at
the qualifying project be not less than the base wage, as defined in Section 40-18-190(a) (1), requirement by the date which is not later than one year after the qualifying project is placed in service and during each year during which all or part of the capital credit is available with respect to the qualifying project.

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

"(b) The Legislature recognizes that one or more entities may enter into a joint venture in the form of a limited liability company, partnership, or other form of business entity in connection with a qualifying project. It is the intent of this article that the requirements of this article respecting minimum capital costs and employment be applied to the qualifying project and that the capital credit be available and granted to those entities liable for or against which the state income tax is allocated or assessed with respect to the income generated by or arising out of the qualifying project. It shall not be a requirement of this
article that the entity employing any new employees be the
same entity entitled to receive the capital credit so long as
the requirements of capital costs and new employees are
implemented and maintained with respect to the qualifying
project.

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

"(d) The Legislature recognizes that while certain
periods specified in this article with respect to the capital
credit are measured by calendar years it will be necessary for
the capital credit to be applied with respect to the tax years
of the recipients of the capital credit. Accordingly, the
department is hereby authorized to adopt regulations to
provide that the capital credit may be allocated to the tax
years of the recipient of the capital credit, including the
method of determining the pro rata amount of capital credit,
if any, available where the tax year of the recipient of the
capital credit will end subsequent to the end of any calendar
year period specified in this article.
"(e) A company shall be considered to have met the employment and wage requirements for the portion of the year following the date upon which such requirements are first met and for each full year thereafter (such portion of a year and each full year thereafter during the 20 year credit period is hereinafter referred to as a "compliance year") if the employment requirement is satisfied for at least 11/12 of each compliance year and the wage requirement is met based on an average determined over each compliance year.

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

"(2) Any investing company that files a written statement of intent (Form INT) with the Department after the
effective date of Act 2009- and that meets the employment and wage requirements of this section by a date which is not later than one year after the date on which the qualifying project is placed in service, but fails to meet such requirements in any subsequent compliance year, shall forfeit a percentage of the capital credits claimed in the prior five years. The forfeiture shall equal 100 percent of the capital credits claimed in the year immediately preceding the year in which the investing company fails to maintain the employment and wage requirements of this section. The forfeiture percentage shall be reduced by 20 percent for each successive prior year in the five year forfeiture period. The forfeiture of capital credits shall be treated in the same manner as the imposition of the tax imposed by this chapter and shall be payable by the investing company on the fifteenth day of the third month following the close of the year in which the investing company failed to meet the employment and wage requirements of this section.

"§40-18-194.

"(a) The Legislature recognizes that a substantial number of businesses are organized as limited liability companies, partnerships, and other types of business entities and that certain business entities, organized as corporations, elect to be treated as "S" corporations under federal and state tax laws, and that it is essential that the capital
credit amount shall be available on a pass-through basis in
the manner hereinafter provided.

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

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

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

"(3) The shareholders of an investing company which
is an Alabama S corporation as defined in Section 40-18-160,
and whose taxable income is subject to determination under
Section 40-18-161, each shall receive a credit against the
individual income tax levied by Section 40-18-5 that otherwise
would be owed to the state in any year by each shareholder of
the investing company with respect to income of the investing
compagny generated by or arising out of the qualifying project.

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

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

"(6) The beneficiaries of an investing company which
is a trust or estate the income of which is subject to
taxation under Section 40-18-25(d) each shall receive a credit
against the corporate income tax levied by Section 40-18-31, 
or against the individual income tax levied by Section 
40-18-5, whichever is applicable to each such beneficiary, 
that otherwise would be owed to the state in any year by each 
beneficiary of the investing company with respect to income of 
the investing company generated by or arising out of the 
qualifying project.

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

"(8)a. An investing company which is a financial 
institution as defined in Section 40-16-1 shall receive a 
credit against the financial institution excise tax levied by 
Section 40-16-4 that otherwise would be owed to the state in 
any year by the investing company with respect to the income 
generated by or arising out of the qualifying project. If a 
financial institution is a shareholder, partner, member, 
owner, beneficiary, or other equity participant in an 
investing company, such financial institution shall receive 
the credit against the financial institution excise tax levied
by Section 48-16-4 on a pass-through basis, and rules similar to those in paragraphs (1), (2), (3), (4), (5), (6), and (7) of this subsection (b) shall be applicable, which is a data processing center, is a headquarters facility, or is described in the 2007 North American Industry Classification System National Industry 561422 (other than establishments that originate telephone calls). To receive the capital credit authorized by this paragraph (8)a., Section 48-18-193 shall be complied with. Further, the financial institution must be the investing company or it must own, directly or indirectly, at least 50 percent of the investing company. If the financial institution is a shareholder, partner, member, owner, or beneficiary of an investing company which is not itself subject to taxation, the financial institution shall be entitled to a capital credit corresponding to its relative ownership interest in the investing company, subject to the 50 percent ownership requirement of the immediately preceding sentence.

"b. In making the report required by Section 48-16-6(d), a financial institution receiving the capital credit authorized in paragraph (8)a. shall not take into account the qualifying project.

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

"(910) In no event may any amount described in this subsection be carried forward or back by any investing
company, shareholders, partners, members, owners, or
beneficiaries with respect to a prior or subsequent year.

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

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

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

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

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

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

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

Section 6. The provisions of this act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law. This act does not repeal or amend the effective date for projects first
authorized by Act 2008-275. The provisions of this act shall
be effective and shall apply for projects authorized in this
act that are first placed in service on or after the effective
date of this act.
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

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<tr>
<th>Senate</th>
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APPROVED May 21, 2009
TIME 1:35 p.m.

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

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