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3 HOUSE WAYS AND MEANS EDUCATION COMMITTEE SUBSTITUTE FOR HB192
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8 SYNOPSIS: This bill would reestablish the Growing
9 Alabama Credit that was repealed following the
10 close of fiscal year 2020 as it was established by
11 Act 2016-102 and amended by Act 2019-392, with the
12 following modifications:

13 This bill allows the credit to be applied
14 against the state portion of the financial
15 institution excise tax and the insurance premiums
16 tax, establishes a \$20 million annual cap on
17 credits, specifies that a portion of the credits
18 are reserved for targeted or jumpstart counties as
19 defined in the statute, allows the credit to be
20 taken by owners of an S corporation or other
21 partnership, and sunsets the tax credit at the end
22 of calendar year 2023.

23 Under the existing Alabama Jobs Act, certain
24 incentivized companies are allowed a jobs credit
25 and an investment credit for creating new jobs in
26 Alabama, which incentives were not available for
27 new projects after December 31, 2020.

1 additional jobs and investment credits for underrepresented
2 businesses and to provide definitions; to allow additional
3 jobs credits for pharmaceutical and medical research,
4 development, and manufacturing; to extend the investment
5 credits to technology companies; to extend the sunset date for
6 the Alabama Jobs Act; to increase the annual cap of Jobs Act
7 credits; to specify the reservation of credits for projects in
8 targeted or jumpstart counties; to provide further definitions
9 and allowable credits for the Alabama Port Credit; to
10 reestablish the Growing Alabama Credits; to allow a mechanism
11 for an economic development organization to apply for funding;
12 to allow for the credit to be taken against the state portion
13 of the financial institution excise tax and the insurance
14 premiums tax; to provide for an annual cap for the amount of
15 Growing Alabama Credits; to clarify the reservation of credits
16 for projects in targeted or jumpstart counties; to allow the
17 credit to be taken by owners of S corporations and other
18 partnerships; to provide rulemaking authority; and to provide
19 for a sunset of the Growing Alabama Credits after calendar
20 year 2023.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 40-18-375, 40-18-376,
23 40-18-376.3, 40-18-382, 40-18-383, 40-18-400, and 40-18-403,
24 of the Code of Alabama 1975, are amended to read as follows:

25 "§40-18-375.

26 "(a) (1) If provided for in the project agreement and
27 in accordance with the terms therein, the incentivized company

1 is allowed a jobs credit against utility taxes, in an annual
2 amount equal to 3 percent of the wages paid to eligible
3 employees during the prior year. The incentive period shall be
4 10 years.

5 "(2) If the incentivized company is engaged in
6 pharmaceutical, biomedical, medical technology or medical
7 supplies manufacturing or their related research and
8 development activities, the incentivized company is allowed a
9 jobs credit against utility taxes, in an annual amount equal
10 to 4 percent of the wages paid to eligible employees during
11 the prior year. The incentive period shall be 10 years. This
12 would apply to companies that predominantly conduct an
13 activity described by NAICS code 3254, 339112, or 339113, to
14 include related research and development.

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

18 "(1)a. The jobs credit may be paid to the
19 incentivized company as a refund out of utility taxes during
20 the incentive period, regardless of the amount of utility
21 taxes actually paid by the incentivized company.

22 "b. For each year of the incentive period for the
23 jobs credit, the incentivized company shall submit to the
24 Department of Commerce a certification as to the wages paid to
25 eligible employees during the prior year. Following such
26 examination as it deems necessary, the Department of Commerce
27 may certify the information and deliver the same to the

1 Department of Revenue. Thereafter, the Department of Revenue
2 shall calculate the correct refund and issue it directly to
3 the incentivized company.

4 "(2)a. The jobs credit may be claimed as a credit
5 against utility taxes actually paid. In any one year, if the
6 credit exceeds the amount of taxes that are allowed to be
7 offset by the project agreement and that are owed by the
8 incentivized company, the incentivized company may carry the
9 credit forward, to the extent allowed in the project
10 agreement. No carryforward shall be allowed for more than five
11 years. Rules similar to those used for Section 40-18-15.2
12 shall be applied.

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

21 "(c) The realization methods in subsection (b) shall
22 not create debts of the state within the meaning of Section
23 213 of the Official ReCompilation of the Constitution of
24 Alabama of 1901, as amended.

25 "(d) The Department of Finance shall ~~promulgate~~
26 adopt regulations to ensure that the credit in no case would

1 reduce the distribution for the Alabama Special Mental Health
2 Trust Fund.

3 "§40-18-376.

4 "(a) If provided for in the project agreement, the
5 incentivized company is allowed an investment credit in an
6 annual amount equal to 1.5 percent of the capital investment
7 incurred as of the beginning of the incentive period, to be
8 used as follows:

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

11 "(2) To offset the financial institution excise tax
12 found in Chapter 16;

13 "(3) To offset the insurance premium tax levied by
14 Section 27-4A-3(a), or as an estimated payment of insurance
15 premium tax;

16 "(4) To offset utility taxes; or

17 "(5) To offset some combination of the foregoing, so
18 long as the same credit is used only once.

19 "The incentive period shall begin no earlier than
20 the placed-in-service date. The incentive period shall be 10
21 years. Should only some portion of a tax year be included in
22 the incentive period, the amount of the investment credit
23 shall be prorated on a daily basis.

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

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

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

18 "(2) The project agreement may authorize an
19 incentivized company that is taxed as a flow-through entity to
20 allocate the credit among some or all of the owners in any
21 manner specified, regardless of whether the allocation follows
22 rules similar to 26 U.S.C. § 704(b) and the regulations
23 thereunder. The owners may then use their allocated share of
24 the investment credit to offset any of the taxes listed in
25 subsection (a), as provided in subdivision (1). This
26 subdivision shall be liberally construed to apply to multiple
27 levels of companies, to allow the investment credits to be

1 used by those persons bearing the tax burdens of the
2 qualifying project, and such companies shall include but shall
3 in no way be limited to flow-through entities, employee stock
4 ownership plans, mutual funds, real estate investment trusts,
5 and it shall also apply to offset the income tax liability of
6 employee/owners of a flow-through entity owned by an employee
7 stock ownership plan trust.

8 "(3) All or part of the first three years of the
9 investment credit may be transferred by the incentivized
10 company and applied by another person or company as follows:

11 "a. A transfer of the credit shall be made by
12 written, notarized contract.

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

17 "(i) That any year's investment credit will not be
18 purchased by more than three transferees, unless such
19 limitation is found by the Secretary of Commerce unnecessarily
20 to limit the class of potential transferees;

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

23 "(iii) That the transfer is at a value of at least
24 85 percent of the present value of the credits.

25 "Upon making affirmative findings on the criteria
26 set forth above, the Secretary of Commerce shall recommend to
27 the Governor that the transfer should be approved. Information

1 about the proposed transfer shall be forwarded to the
2 Governor, and the Governor may include provisions about the
3 transfer in the project agreement, or in an amendment thereto
4 executed by the Governor and the incentivized company.

5 "c. If a transfer is approved, the incentivized
6 company shall submit to the Department of Commerce the
7 following:

8 "(i) Certifications as to its capital investment as
9 of the dates specified in the project agreement. Following
10 such examination as it deems necessary, the Department of
11 Commerce may certify the information and deliver the same to
12 the Department of Revenue.

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

19 "d. Upon receipt of the certifications from the
20 Department of Commerce as required by paragraph c., the
21 Department of Revenue shall thereafter allow the appropriate
22 amount of the investment credit to offset the tax liability of
23 the transferee for any of the taxes listed in subsection (a)
24 and, for any project agreements entered into after January 1,
25 2021 only, state license taxes levied by Article 2 of Chapter
26 21 of Title 40 of the Code of Alabama 1975. In any one year,
27 if the investment credit exceeds the amount of taxes that are

1 allowed to be offset and that are owed by the transferee, the
2 transferee may carry the credit forward for five years. A
3 transferee may not make a subsequent transfer of the credit.

4 "e. If a credit is transferred, an incentivized
5 company that is later determined by the Secretary of Commerce
6 to have defaulted under the project agreement shall be liable
7 for the underpayment of tax attributable to the credit and for
8 penalties and interest thereon. Unless the purchase of the
9 credits is determined to have been made in a fraudulent
10 manner, or is a transfer in anticipation of bankruptcy,
11 insolvency, or closure, a transferee shall not be liable for
12 the unpaid tax attributable to the credit, or for penalties or
13 interest thereon.

14 "(c) The realization methods in subsection (b) shall
15 not create debts of the state within the meaning of Section
16 213 of the Official Recompilation of the Constitution of
17 Alabama of 1901, as amended.

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

26 "(2) To the extent the investment credit is used to
27 offset an insurance premium tax liability, the Department of

1 Finance shall adopt rules to ensure that the credit would
2 reduce the distribution for the Education Trust Fund, but in
3 no case would the investment credit reduce the distributions
4 for the State General Fund or the Alabama Special Mental
5 Health Trust Fund.

6 "(3) To the extent the investment credit is used to
7 offset liability for the tax imposed by Section 40-21-82 or
8 Article 2 of Chapter 21 of Title 40 of the Code of Alabama
9 1975, the Department of Finance shall adopt rules to ensure
10 that the credit in no case would reduce the distribution for
11 the Alabama Special Mental Health Trust Fund.

12 "§40-18-376.3.

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

19 "(2) In making the findings required by Section
20 40-18-373(1), a technology company that proposes a qualifying
21 project shall be an approved company for purposes of this
22 section only if the Secretary of Commerce makes the additional
23 finding that the qualifying project will increase the economic
24 diversity of, or otherwise benefit, the state.

25 "(3) A qualifying project shall be deemed to be in
26 existence notwithstanding the requirements of Section
27 40-18-372 so long as at least 10 new employees are employed at

1 the qualifying project, absent a finding of extraordinary
2 circumstances by the Secretary of Commerce.

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

6 (1) ~~A qualifying project shall be deemed to be in~~
7 ~~existence notwithstanding the requirements of Section~~
8 ~~40-18-372 so long as at least five new employees are employed~~
9 ~~at the qualifying project, absent a finding of extraordinary~~
10 ~~circumstances by the Secretary of Commerce. A jobs credit~~
11 ~~against utility taxes, in an annual amount equal to 4 percent~~
12 ~~of the wages paid to eligible employees during the prior year.~~
13 The incentive period shall be 10 years.

14 "(2) ~~The jobs credit provided in Section~~
15 ~~40-18-375(a) shall include an additional 2 percent above that~~
16 ~~otherwise allowed. An investment credit as provided in Section~~
17 40-18-376.

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

20 "(1) A company which earns at least 75 percent of
21 its revenues from either of the following:

22 "a. Activities within subsector 518; industry group
23 5112, 5121 (other than 51213), 5415, or 5417; or industry
24 51913 of the 2012 North American Industry Classification
25 System, or any similar classification system developed in
26 conjunction with the United States Department of Commerce or
27 Office of Management and Budget.

1 "b. The use of technology to develop new coding or
2 processes for the creation or delivery of goods or services in
3 the following fields, or any additional activities determined
4 by the Secretary of Commerce to be beneficial to the
5 enhancement of businesses rooted in either of the following
6 fields:

7 "1. Any of the fields of education, healthcare,
8 energy, agriculture, infrastructure, software, robotics,
9 nutrition, aerospace, automotive, or financial services.

10 "2. Any fields related to science, technology,
11 engineering, or mathematics.

12 "(2) A company which, for a fixed term, educates and
13 mentors early-stage technology companies recruited to a
14 location in Alabama, with the goal of accelerating the
15 companies' development and growth.

16 "§40-18-382.

17 "The incentives authorized by this article shall not
18 be available for qualifying projects for which project
19 agreements have not been executed on or prior to ~~December 31,~~
20 ~~2020~~ July 31, 2023, unless the Legislature, ~~by joint~~
21 ~~resolution or other applicable action of both houses, votes~~
22 enacts legislation to continue or reinstate the incentives for
23 new projects after that date. No action or inaction on the
24 part of the Legislature shall reduce or suspend any incentive
25 awarded pursuant to this article in any past or future
26 calendar year with respect to qualifying projects for which
27 project agreements have been executed on or prior to ~~December~~

1 ~~31, 2020~~ July 31, 2023, it being the sole intention of this
2 section that failure of the Legislature to ~~adopt a joint~~
3 ~~resolution or other applicable action of both houses~~ enact
4 legislation continuing the incentives authorized by this
5 article for periods after ~~December 31, 2020~~ July 31, 2023,
6 shall affect only the availability of the incentives to
7 qualifying projects for which project agreements have not been
8 executed on or prior to ~~December 31, 2020~~ July 31, 2023, and
9 shall not affect qualifying projects for which project
10 agreements have been executed on or prior to ~~December 31, 2020~~
11 July 31, 2023.

12 "§40-18-383.

13 "(a) At no time prior to the calendar year ending
14 December 31, 2020, shall the annualized balance of outstanding
15 jobs act incentives exceed \$300 million, which amount would
16 increase to three hundred twenty-five million dollars
17 (\$325,000,000) for the calendar year ending December 31, 2021
18 and three hundred fifty million dollars (\$350,000,000) for the
19 calendar year ending December 31, 2022, unless the
20 Legislature, ~~by joint resolution or other applicable action of~~
21 ~~both houses, votes~~ enacts legislation to allow additional jobs
22 act incentives. Of the above annualized balance, twenty
23 million dollars (\$20,000,000) shall apply to qualifying
24 projects located in targeted or jumpstart counties as
25 described in Section 40-18-376.1.

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

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

8 "§40-18-400.

9 "For the purposes of this article, the following
10 words and phrases shall have the following meanings:

11 "(1) BASE CARGO VOLUME. The greater of the
12 following:

13 "a. One hundred five percent of the cargo volume of
14 a port facility user in the 12-month period immediately
15 preceding the application.

16 "b. Ten TEUs~~7~~ for cargo measured by TEU, ~~or~~ 75 net
17 tons~~7~~ for cargo measured by net ton, or 400 VEUs for cargo
18 measured by VEU.

19 "(2) CARGO VOLUME. The total amount of
20 noncontainerized general cargo or containers, measured in
21 TEUs, in net tons, or in kilograms, or in VEUs transported by
22 way of a waterborne ship, air cargo aircraft, or railroad
23 through a port facility; provided that such cargo shall be
24 owned by the port facility user at the time the port facility
25 is used.

26 "(3) COMMISSION. The Renewal of Alabama Commission
27 created by Section 40-18-402.

1 "(4) COMPANY. Anyone or anything which has the
2 powers to conduct the activities required to claim the port
3 credit.

4 "(5) INLAND PORTS. Physical sites located away from
5 traditional land, air, and coastal borders with the vision to
6 facilitate and process international and domestic trade
7 through strategic investment in multi-modal transportation
8 assets and by promoting value-added services as goods move
9 through the supply chain.

10 "(6) PORT FACILITY. Any ~~publicly owned~~ type of deep
11 draft ship terminal facility located within this state's ports
12 of entry, including publicly owned inland ports, through which
13 cargo is transported by way of a waterborne ship, air cargo
14 aircraft, or railroad, to or from destinations inside or
15 outside this state and which handles cargo owned by third
16 parties in addition to cargo owned by the port facility's
17 owner.

18 "(7) PORT CREDIT. The credit provided for in Section
19 40-18-403.

20 "(8) PORT FACILITY USER. A company engaged in
21 manufacturing, warehousing, or distribution which uses a port
22 facility.

23 "(9) TEU. A "20-foot equivalent unit" volumetric
24 measure based on the size of a container 20 feet long by eight
25 feet wide by eight feet, six inches high.

26 "(10) VEHICLE. Any motorized vehicle as defined in
27 Section 32-1-1.1.

1 "(11) VEU. A "Vehicle Equivalent Unit" volumetric
2 measure of one (1) cubic meter.

3 "\$40-18-403.

4 "(a) If approved by the commission, a port credit is
5 allowed, in an amount equal to fifty dollars (\$50) per TEU,
6 three dollars (\$3) per net ton, ~~or~~ four cents (\$0.04) per
7 kilogram for air freight, or two dollars and ninety-one cents
8 (\$2.91) per VEU, multiplied by the following:

9 "(1) The port user's cargo volume in the 12-month
10 period for which the commission has granted approval for the
11 port user to claim the port credit, minus

12 "(2) The port user's base cargo volume.

13 "(b) The commission shall decrease the amount of the
14 port credit to ensure that the anticipated revenues for the
15 port facility and state will exceed the amount of the port
16 credit sought. The port credit may be conditioned on whatever
17 requirements the commission shall impose. The port credits
18 shall only be available to the extent that a port facility
19 user ships more than 105 percent of its cargo volume from the
20 12-month period immediately preceding the port facility user's
21 application. Moreover, the port credit shall only be available
22 to the extent a port facility user ships more than 10 TEUs,
23 for cargo measured by TEU, more than 75 net tons, for cargo
24 measured by net ton, or more than fifteen thousand (15,000)
25 kilograms for air cargo measured by kilograms, or more than
26 400 VEUs, for cargo measured by VEU.

1 "(c) The following methods may be used to realize
2 the port credit:

3 "(1) The port credit may offset the tax levied by
4 this chapter, but not below zero. The port credit may also
5 offset the estimated payments of the tax levied by this
6 chapter, but not below zero. In no event shall the port
7 credits be allowed to reduce any estimated payment of the tax
8 levied by this chapter before October 1, 2016. In any one
9 year, if the port credit exceeds the amount of tax liability,
10 the port user may carry forward the unused port credit. No
11 carryforward shall be allowed for more than five years. Rules
12 similar to those used for Section 40-18-15.2 shall be applied.

13 "(2) A company may assign and convey a port credit
14 to another company if substantially all of the assets of the
15 company are assigned and conveyed in the same transaction.
16 Proof of such transfer shall be submitted to the Department of
17 Revenue.

18 "(d) To the extent that the port credit is utilized
19 by the port user or by a transferee company, no deduction for
20 the related expenses shall be allowed.

21 "(e) For any company which enters into an economic
22 development project agreement with the state, the project
23 agreement may provide for an allocation to the company of any
24 port credits which have not been allocated pursuant to this
25 article. Allocations made pursuant to this subsection shall
26 meet all of the following requirements:

1 "(1) Allocations shall be made by the Governor and
2 approved by the commission.

3 "(2) Allocations for a project shall not exceed
4 three million dollars (\$3,000,000).

5 "(3) Allocations shall be granted only to a new
6 warehouse or distribution facility which commits to investing
7 at least twenty million dollars (\$20,000,000) at a single site
8 and to creating 75 net new jobs in Alabama.

9 "(4) Port credits may not be used until the
10 Department of Commerce has received satisfactory proof that
11 the capital investment and job creation requirements have been
12 satisfied.

13 "(5) Any port credit granted by this procedure shall
14 not be granted for more than a 3-year period.

15 "(6) Allocations shall not exceed one hundred
16 dollars (\$100) per TEU, three dollars (\$3) per net ton, ~~or~~
17 four cents (\$0.04) per kilogram for air freight, or two
18 dollars and ninety one cents (\$2.91) per VEU.

19 "(7) Anticipated revenues for the state shall exceed
20 the port credit granted, and the project agreement shall
21 provide for recapture of all or part of the port credit should
22 the company default on its obligations in the project
23 agreement."

24 Section 2. Sections 3 through 9 shall be known and
25 may be cited as the Growing Alabama Act.

26 Section 3. For the purposes of this act, the
27 following words and phrases shall have the following meanings:

1 (1) ACCELERATOR. A company which, for a fixed term,
2 educates and mentors early-stage technology companies
3 recruited to a location in Alabama, with the goal of
4 accelerating the companies' development and growth.

5 (2) CAPITAL IMPROVEMENTS. Construction and
6 rehabilitation expenses of a capital nature at an inland port
7 or intermodal facility, the dredging of waterways in the
8 immediate vicinity of an inland port, and the expansion of
9 onsite storage facilities at an inland port or intermodal
10 facility.

11 (3) ECONOMIC DEVELOPMENT ACTIVITIES. Activities and
12 initiatives which enhance the use of, and flow of goods
13 through, an inland port or intermodal facility.

14 (4) ECONOMIC DEVELOPMENT ORGANIZATION. A local
15 economic development organization or a state economic
16 development organization.

17 (5) GROWING ALABAMA CREDIT. The credit provided for
18 in subsection (a) of Section 6.

19 (6) INDUSTRY OR BUSINESS. An entity which would
20 conduct at a site an activity that is primarily described in
21 Section 40-18-372(1), Code of Alabama 1975.

22 (7) INLAND PORT. Any port on a navigable river away
23 from traditional land, air, and coastal borders.

24 (8) INTERMODAL FACILITY. Any facility which
25 interconnects two or more different modes of air, rail, or
26 road traffic serving multiple customers, and which involves
27 storage facilities.

1 (9) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION.

2 Organizations which are determined by the Department of
3 Commerce to meet both of the following criteria: a. The
4 organization is an Alabama entity not operating for a profit,
5 including, but not limited to, a municipality or county, an
6 industrial board or authority, a chamber of commerce, or some
7 other foundation or Alabama nonprofit corporation charged with
8 improving a community or region of the state. b. The
9 organization has a record of supporting or otherwise
10 participating in economic development activities in some part
11 of Alabama.

12 (10) RENEWAL OF ALABAMA COMMISSION. The Renewal of
13 Alabama Commission created by Section 40-18-402, Code of
14 Alabama 1975.

15 (11) SITE. Real property owned by a local economic
16 development organization and intended for use by an industry
17 or business.

18 (12) STATE ECONOMIC DEVELOPMENT ORGANIZATION.

19 Organizations which are determined by the Department of
20 Commerce to be an Alabama entity not operating for a profit
21 which is charged with improving the state or a region of the
22 state and has a record of supporting or otherwise
23 participating in economic development activities in the state.

24 Section 4. (a) (1) A local economic development
25 organization which owns a site may apply to the Department of
26 Commerce for funding to solve an inadequacy involving the

1 site. The application by the local economic development
2 organization shall include at least one of the following:

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

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

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

18 d. Capital improvements or economic development
19 activities at an inland port or intermodal facility, as
20 described in Section 3; provided that the application is
21 accompanied by an economic impact report on such improvements
22 or activities.

23 e. Any site improvement or public infrastructure
24 work in census tracts that meet the definition of low-income
25 communities found in 26 U.S.C. 45D(e).

1 (2) An economic development organization may apply
2 to the Department of Commerce for funding to undertake any of
3 the following issues:

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

10 b. The construction, maintenance, promotion,
11 operation, management, leasing, and subleasing of an
12 agricultural center which includes a multi-use facility and
13 related commercial and noncommercial structures for livestock,
14 equestrian, small animal shows and events, spectator events,
15 trade shows, educational conferences, agricultural and
16 agricultural related industries, educational, demonstrational
17 or training purposes, educational and training conferences or
18 events, recreational vehicle rallies, recreational vehicle
19 multi-day parking, hosting of corporate and non-corporate
20 organization meetings, use as fair grounds, operation of
21 retail activities, and other events and facilities expected to
22 draw participants and spectators from states located across
23 the southeastern United States, with a projected total annual
24 economic impact upon completion of all phases of the
25 agricultural center at least thirty-five million dollars
26 (\$35,000,000) and with the related and supporting
27 infrastructure and facilities having a projected capital

1 expenditure upon completion of all phases of the agricultural
2 center of at least one hundred million dollars (\$100,000,000);
3 provided that the application is accompanied by an economic
4 impact report on the agricultural center.

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

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

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

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

25 (e) The application provided in subsection (a) shall
26 include a notarized affirmation by an officer of the economic
27 development organization that the submission of the

1 application did not violate the conflict of interest policy
2 referred to in subsection (d).

3 Section 5. (a) Following a review, if the Department
4 of Commerce should approve the application provided in
5 subsection (a) of Section 4, it shall forward the application
6 to the Renewal of Alabama Commission.

7 (b) The Renewal of Alabama Commission shall consider
8 the application and shall approve it if it deems it worthy of
9 approval. As to improvements at industrial sites, the
10 commission shall give preference to sites with at least 1,000
11 acres of available space. As to applications for projects
12 located in communities which have the potential to provide
13 additional funding separate from the Growing Alabama Credits,
14 the commission shall take into consideration whether such
15 separate funding is to be provided to the project which is the
16 subject of the application. Meetings of the commission are
17 subject to Chapter 25A of Title 36, Code of Alabama 1975.
18 Notwithstanding the foregoing, the commission may meet by
19 telephone or some other telecommunications device so long as
20 members of the public are allowed the opportunity to listen to
21 or otherwise observe the commission's deliberations.

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

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

1 economic development organization which shall do all of the
2 following:

3 (1) Require the economic development organization to
4 use funding received as a result of this law only for the
5 purposes approved by the commission as expressed in the
6 agreement.

7 (2) Require the economic development organization to
8 make periodic reports, not more often than annually, to the
9 Department of Commerce and the commission, as required by the
10 commission, on the disposition of the funds. As to a project
11 described in subdivision (a)(1), of Section 4, the report
12 shall include information on the marketing of the site, and
13 the ultimate use of the site until such time as it makes a
14 final report. As to a project related to inland ports or
15 intermodal facilities as described in paragraph (a)(1) d. of
16 Section 4 or a project related to a technology company or
17 agricultural center as described in subdivision (a)(2) of
18 Section 4, the report shall include an economic impact report.

19 (3) Require the economic development organization to
20 provide a review of its financial accounts as directed by the
21 Renewal of Alabama Commission.

22 (e) For any approved applications, the Department of
23 Commerce shall notify the Department of Revenue of the
24 information specified in subsection (c).

25 (f) The Department of Commerce shall publish on its
26 website a list of all approved applications and a list of the

1 economic development organizations which made the approved
2 applications.

3 Section 6. (a) A taxpayer is allowed a Growing
4 Alabama Credit to be applied against all of the following:

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

7 (2) To offset the state portion of the financial
8 institution excise tax levied in Chapter 16 of Title 40 of the
9 Code of Alabama 1975.

10 (3) To offset the insurance premium tax levied by
11 subsection (a) of Section 27-4A-3, Code of Alabama 1975.

12 (4) To offset state license taxes levied by Article
13 2 of Chapter 21 of Title 40 of the Code of Alabama 1975.

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

18 (c) Growing Alabama Credits shall be granted to
19 taxpayers using an online system administered by the
20 Department of Revenue. The online system shall allow taxpayers
21 to agree to make a cash contribution to an economic
22 development organization which was approved by the Renewal of
23 Alabama Commission, as provided in Section 5. The online
24 system shall ensure that credits are not granted for
25 contributions to an economic development organization in
26 excess of the amounts approved by the Renewal of Alabama
27 Commission, as provided in Section 5.

1 (d) The cumulative amount of funding approved
2 pursuant to this section shall not exceed twenty million
3 dollars (\$20,000,000) in a calendar year. Of that amount, no
4 more than four million dollars (\$4,000,000) of funding in the
5 aggregate may be approved for accelerator programs as
6 described in Section 40-18-376.3 (c) (2), Code of Alabama 1975.

7 (e) The Renewal of Alabama Commission shall reserve
8 at least 25 percent of the amounts specified in subsection (c)
9 for projects located in targeted or jumpstart counties as
10 defined in Section 40-18-376.1, Code of Alabama 1975. In the
11 event applications are not received and credits are not
12 allocated for projects in these areas by the close of the
13 second quarter of the program year, the funds may revert for
14 allocations of other project applications.

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

26 (g) The Department of Finance shall adopt rules to
27 ensure that the Growing Alabama Credit in no case would reduce

1 the distribution for the Alabama Special Mental Health Trust
2 Fund by using any unencumbered funds.

3 Section 7. (a) Upon receipt of funding provided by
4 the tax credit process in Section 6, the economic development
5 organization shall proceed with the work that was specified in
6 the application required by Section 4.

7 (b) (1) As to a project described in subdivision
8 (a) (1) of Section 4, the economic development organization
9 shall report to the Department of Commerce upon the completion
10 of the site preparation or public infrastructure work, upon
11 the transfer of the site to an industry or business, and at
12 other times as may be required or requested by the Department
13 of Commerce.

14 (2) As to a project described in subdivision (a) (2)
15 of Section 4, the economic development organization shall
16 report to the Department of Commerce upon the completion of
17 the work and at such times as may be required or requested by
18 the Department of Commerce.

19 (c) The Department of Commerce shall make an annual
20 report on the use of funds pursuant to this act to the Chair
21 of the House Ways and Means Education Committee, the Chair of
22 the Senate Finance and Taxation Education Committee, and the
23 members of the Joint Legislative Advisory Committee on
24 Economic Incentives established by Section 40-18-379, Code of
25 Alabama 1975, at the times, and in the manner, requested by
26 the committee.

1 Section 8. (a) All filings and applications made
2 with any department of the state government shall be made
3 using forms promulgated by such department. Any such filing
4 shall be treated as a tax return, subject to penalties imposed
5 by the Department of Revenue.

6 (b) Nothing in this act shall be construed to
7 constitute a guarantee or assumption by the state of any debt
8 of any company nor to authorize the credit of the state to be
9 given, pledged, or loaned to any company.

10 (c) Nothing in this act shall be construed to make
11 available to any taxpayer any right to the benefits conferred
12 by this act absent strict compliance with this act.

13 (d) Nothing in this act shall be construed to limit
14 the powers otherwise existing for the Department of Revenue to
15 audit and assess a taxpayer claiming the Growing Alabama
16 Credit.

17 (e) Nothing in this act shall be construed to change
18 or lessen the requirements for claiming jobs act incentives
19 under the Alabama Jobs Act in Article 16 of Chapter 18 of
20 Title 40 of the Code of Alabama 1975. Companies claiming the
21 jobs act incentives must strictly comply with Article 16 of
22 Chapter 18 of Title 40 of the Code of Alabama 1975.

23 (f) The Department of Commerce and Department of
24 Revenue are authorized to adopt rules as necessary to
25 implement and administer this act.

26 Section 9. The Growing Alabama Credits provided in
27 this act shall not be available for qualifying applicants as

1 described in this act, for which applications are not approved
2 on or prior to July 31, 2023, unless the Legislature enacts
3 legislation to extend the date. This shall only affect the
4 availability of credits for applications not approved on or
5 prior to July 31, 2023, and shall not cause a reduction or
6 suspension of any credits awarded on or prior to July 31,
7 2023.

8 Section 10. A new section 40-18-376.4 is added to
9 Article 16, Chapter 18 of Title 40, Code of Alabama 1975, to
10 read as follows:

11 §40-18-376.4.

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

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

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

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

4 (3) The investment credit provided in Section
5 40-18-376(a) shall have an incentive period of 15 years.

6 (c) An "underrepresented company" is any company
7 which meets all the criteria in the following paragraph (1) or
8 (2):

9 (1) The company is a for-profit business
10 headquartered in a community eligible for investment through
11 the federal New Markets Tax Credit program under 26 USC
12 45D(e), has fewer than 10 employees at the time the project
13 agreement is executed, and has average gross revenues of less
14 than \$500,000 in the company's three years prior to the
15 execution of the project agreement; or

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

26 Section 11. Any action taken prior to the effective
27 date of this act by the Governor by proclamation or otherwise

1 or any action taken by any agency or department to extend
2 benefits or credits under the Alabama Jobs Act or the Growing
3 Alabama Act is hereby ratified and confirmed.

4 Section 12. This act shall become effective
5 immediately upon its passage and approval by the Governor, or
6 its otherwise becoming law.