

1 HB154  
2 136218-5  
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ENROLLED, An Act,

To amend Sections 40-9B-3, 40-9B-4, 40-18-190, and 40-18-193, Code of Alabama 1975, to allow the governing body of a municipality, county, or a public industrial authority to grant abatements of certain ad valorem taxes and construction related transaction taxes to private users of data processing centers for a period of up to thirty years and reduce the corresponding employment thresholds, provided that certain minimum capital investment requirements are met.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Alabama Data Processing Center Economic Incentive Enhancement Act of 2012.

Section 2. Sections 40-9B-3, 40-9B-4, 40-18-190, and 40-18-193, Code of Alabama 1975, 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

1 obligation to collect and pay over the transaction tax as if  
2 the sale were to a person exempt, to the extent of the  
3 abatement, from the transaction tax.

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

6 "(3) CONSTRUCTION RELATED TRANSACTION TAXES. The  
7 transaction taxes imposed by Chapter 23 of this title, or  
8 payments required to be made in lieu thereof, on tangible  
9 personal property and taxable services incorporated into an  
10 industrial development property, ~~and on computer software~~  
11 ~~acquired for use in the operation of a data processing center,~~  
12 the cost of which may be added to capital account with respect  
13 to the property, determined without regard to any rule which  
14 permits expenditures properly chargeable to capital account to  
15 be treated as current expenses.

16 "(4) DATA PROCESSING CENTER. An establishment at  
17 which not less than ~~fifty~~ twenty new jobs are located, the  
18 average annual total compensation, including benefits, of such  
19 new jobs to be not less than forty thousand dollars (\$40,000)  
20 and ~~which~~ such establishment is engaged in the provision of  
21 complete processing and specialized reports from data, the  
22 provision of automated data processing and data entry  
23 services, the provision of an infrastructure for hosting or  
24 data processing services, the provision of specialized hosting  
25 activities, the provision of application service provisioning,

1 the provision of general time-share mainframe facilities, or  
2 some combination of the foregoing, without regard to whether  
3 any other activities are conducted at the establishment.

4 "(5) EDUCATION TAXES. Ad valorem taxes, or payments  
5 required to be made in lieu thereof, that must, pursuant to  
6 the Constitution of Alabama of 1901, as amended, legislative  
7 act, or the resolution or other action of the governing board  
8 authorizing the tax, be used for educational purposes or for  
9 capital improvements for education and local construction  
10 related transaction taxes levied for educational purposes or  
11 for capital improvements for education.

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

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

20 "(8) INDUCEMENT. Refers to an agreement, or an  
21 "inducement agreement," entered into between a private user  
22 and a public authority or county or municipal government  
23 and/or a resolution or other official action, an "inducement  
24 resolution," "inducement letter," or "official action" adopted  
25 by a public authority or county or municipal government, in

1 each case expressing, among other things, the present intent  
2 of such public authority or county or municipal government to  
3 issue bonds in connection with the private use property  
4 therein described.

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

8 "(10) INDUSTRIAL OR RESEARCH ENTERPRISE.

9 "a. Any trade or business described in the 2007  
10 North American Industry Classification System, promulgated by  
11 the Executive Office of the President of the United States,  
12 Office of Management and Budget, Sectors 31 (other than  
13 National Industry 311811), 32, and 33; Subsectors 423, 424,  
14 493 where the trade or business will (i) provide logistics  
15 services related to the distribution of goods, (ii) employ 50  
16 or more persons within the first two years after being placed  
17 in service, and (iii) involve a capital investment of at least  
18 five million dollars (\$5,000,000), except that the investment  
19 in a trade or business located in a favored geographic area,  
20 as that term is defined in Section 40-18-190(a)(6), must  
21 exceed one million dollars (\$1,000,000), 511, and 927;  
22 Industry Groups 5417, 5415, and 5182 (without regard to the  
23 premise that data processing and related services be performed  
24 in conjunction with a third-party); Industries 11331 and  
25 48691; and National Industries 115111, 517110, 541380, and

1 561422 (other than establishments that originate telephone  
2 calls) and includes such trades and businesses as may be  
3 hereafter added by an act of the Legislature, reclassified in  
4 any subsequent publication of the North American Industry  
5 Classification System or other industry classification system  
6 developed in conjunction with the United States Department of  
7 Commerce, or any process or treatment facility which recycles,  
8 reclaims, or converts any materials, which include solids,  
9 liquids, or gases, to a reusable product.

10 "b. With respect to abatements granted in accordance  
11 with Section 40-9B-9, and only with respect to such  
12 abatements, "industrial or research enterprise" means any  
13 trade or business described in the 2007 North American  
14 Industry Classification System within Subsector 493  
15 (Warehousing and Storage), Industry Number 488310 (Port and  
16 Harbor Operations), or Industry Number 488320 (Marine Cargo  
17 Handling), when such trade or business is conducted on  
18 premises in which the Alabama State Port Authority has an  
19 ownership, leasehold, or other possessory interest and such  
20 premises are used as part of the operations of the Alabama  
21 State Port Authority.

22 "c. "Industrial or research enterprise" includes the  
23 above-described trades and business and any others as may  
24 hereafter be reclassified in any subsequent publication of the  
25 NAICS or similar industry classification system developed in

1 conjunction with the United States Department of Commerce or  
2 Office of Management and Budget.

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

10 "e. "Industrial or research enterprise" also  
11 includes any plant, property, or facility that meets both of  
12 the following:

13 "1. It produces electricity from:

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

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

19 "2. All or a portion of the plant, property, or  
20 facility is owned by one or more of the following: A utility  
21 described in Section 37-4-1(7)a., an entity organized under  
22 the provisions of Chapter 6 of Title 37, or an authority both  
23 organized and existing pursuant to the provisions of Chapter  
24 50A of Title 11 and subject to the payments required to be  
25 made in lieu of ad valorem, sales, use, license, and severance

1 taxes imposed by Section 11-50A-7, or an entity in which one  
 2 or more of the foregoing owns an interest.

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

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

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

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

11 "(11) MAJOR ADDITION. Any addition to an existing  
 12 industrial development property that equals the lesser of: 30  
 13 percent of the original cost of the industrial development  
 14 property or two million dollars (\$2,000,000). For purposes of  
 15 this subsection, the original cost of existing industrial  
 16 development property shall be the amount of industrial  
 17 development property with respect to which an abatement was  
 18 granted under this chapter when the property was constructed,  
 19 or if the existing industrial development property was  
 20 constructed before January 1, 1993, the maximum amount that  
 21 would have been allowed if the provisions of this chapter had  
 22 applied at the time it was constructed. Only property that  
 23 constitutes industrial development property shall be taken  
 24 into account in making the determination in the previous  
 25 sentence. Major addition shall include any addition costing at



1 least two million dollars (\$2,000,000) which constitutes an  
 2 industrial or research enterprise, regardless of whether added  
 3 to an existing industrial development property.

4 "(12) MAXIMUM EXEMPTION PERIOD. Except as provided  
 5 in Section 40-9B-11, either

6 "a. A a period equal to the shorter of:

7 "1.a. Ten years from and after: ~~1.~~ (i) The date of  
 8 initial issuance by a county, city, or public authority of  
 9 bonds to finance any costs of a private use property, or ~~2.~~  
 10 (ii) If no such bonds are ever issued, the later of: ~~(i)~~ A.  
 11 The date on which title to the property was acquired by or  
 12 vested in the county, city, or public authority, or ~~(ii)~~ B.  
 13 The date on which the property is or becomes owned, for  
 14 federal income tax purposes, by a private user; or

15 "2.b. The weighted average economic life of the  
 16 assets comprising such property, determined consistently with  
 17 the provisions of 26 U.S.C. § 147(b) and measured from the  
 18 date such property is placed in service; or

19 "b. Exclusively with respect to a private user of a  
 20 data processing center, (i) a period of ten years from and  
 21 after the date on which private use property is or becomes  
 22 owned, for federal income tax purposes, by such private user,  
 23 if the aggregate capital investment in the data processing  
 24 center by the private user does not exceed \$100,000,000  
 25 \$200,000,000 within 10 years from the date on which the

1 private user commences the acquisition, construction, and  
2 equipping of the data processing center, (ii) a period of  
3 twenty years from and after the date on which private use  
4 property is or becomes owned, for federal income tax purposes,  
5 by such private user, if the aggregate capital investment in  
6 the data processing center by the private user exceeds  
7 ~~\$100,000,000~~ \$200,000,000 but is not greater than ~~\$300,000,000~~  
8 \$400,000,000 within 10 years from the date on which the  
9 private user commences the acquisition, construction, and  
10 equipping of the data processing center, or (iii) a period of  
11 thirty years from and after the date on which private use  
12 property is or becomes owned, for federal income tax purposes,  
13 by such private user, if the aggregate capital investment in  
14 the data processing center by the private user exceeds  
15 ~~\$100,000,000~~ \$200,000,000 within 10 years from the date on  
16 which the private user commences the physical work of  
17 constructing and equipping the data processing center and  
18 exceeds ~~\$300,000,000~~ \$400,000,000 within 20 years from the  
19 date on which the private user commences the acquisition,  
20 construction, and equipping of the data processing center. For  
21 purposes of this paragraph b., a private user's aggregate  
22 capital investment in a data processing center shall include  
23 all real and personal property comprising a data processing  
24 center, the costs of which may be capitalized for federal  
25 income tax purposes. In no event shall abatements of

1 construction related transaction taxes or noneducational ad  
2 valorem taxes granted for a data processing center apply  
3 beyond the expiration of the applicable maximum exemption  
4 period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 "(b) The abatements of ad valorem taxes, and  
10 payments in lieu thereof, allowed by amendments to this  
11 section by Act 2008-275 shall become effective for projects  
12 for which statements of intent are filed after December 31,  
13 2011. No ad valorem taxes, or payments in lieu thereof, shall  
14 be abated for periods prior to January 1, 2012. The other  
15 abatements allowed by amendments made to this section by Act  
16 2008-275 shall become effective after December 31, 2011.

17 "§40-9B-4.

18 "(a) Noneducational ad valorem taxes, construction  
19 related transaction taxes, except those local construction  
20 related transaction taxes levied for educational purposes or  
21 for capital improvements for education, and mortgage and  
22 recording taxes, or payments required to be made in lieu  
23 thereof, and in the case of a qualifying industrial or  
24 research enterprise described in Section 40-9B-3(a)(10)e.  
25 which is owned by an entity organized under Chapter 6 of Title

1 37, or by an authority both organized and existing pursuant to  
2 Chapter 50A of Title 11, and subject to the payments required  
3 to be made in lieu of ad valorem, sales, use, license, and  
4 severance taxes imposed by Section 11-50A-7, in addition to  
5 the foregoing, all other ad valorem taxes, or payments  
6 required to be made in lieu thereof, imposed by the state,  
7 counties, municipalities, and other taxing jurisdictions of  
8 Alabama, may be abated with respect to private use industrial  
9 property and security documents and other recordable documents  
10 associated therewith as provided in this chapter.

11 "(b) No abatement of noneducational ad valorem  
12 taxes, other ad valorem taxes, or payments required to be made  
13 in lieu of the foregoing, may exceed the maximum exemption  
14 period. No further abatement with respect to the same private  
15 use industrial property may be granted unless there is a major  
16 addition to the property, in which event abatement may be  
17 granted only with respect to the noneducational ad valorem  
18 taxes, and in the case of a qualifying industrial or research  
19 enterprise described in Section 40-9B-3(a)(10)e. which is  
20 owned by an entity organized under Chapter 6 of Title 37, or  
21 by an authority both organized and existing pursuant to  
22 Chapter 50A of Title 11, and subject to the payments required  
23 to be made in lieu of ad valorem, sales, use, license, and  
24 severance taxes imposed by Section 11-50A-7, in addition to  
25 the noneducational ad valorem taxes, with respect to all other

1 ad valorem taxes, or payments required to be made in lieu  
2 thereof, imposed by the state, counties, municipalities, and  
3 other taxing jurisdictions of Alabama, on the major addition  
4 by complying with the procedures set forth in this chapter.  
5 Notwithstanding the immediately preceding sentence, with  
6 respect to a data processing center, an abatement of  
7 noneducational ad valorem taxes, other ad valorem taxes, or  
8 payments required to be made in lieu thereof, shall apply to  
9 all real and personal property comprising a data processing  
10 center, the costs of which may be capitalized for federal  
11 income tax purposes, acquired at any time during the  
12 applicable maximum exemption period, including, but not  
13 limited to, computers, software licensed for use at the  
14 qualifying data processing center, equipment supporting  
15 computing, networking, or data storage; cooling systems,  
16 cooling towers, and other temperature infrastructure; power  
17 infrastructure for transformation, distribution, or management  
18 of electricity used for the maintenance and operation of a  
19 data processing center, including, but not limited to,  
20 exterior dedicated business-owned substations, backup power  
21 generation systems, battery systems, and related  
22 infrastructure; and any other equipment necessary for the  
23 maintenance and operation of a data processing center.

24 "(c) An abatement of construction related  
25 transaction taxes, or payments required to be made in lieu



1       thereof, shall apply only to tangible personal property and  
2       taxable services incorporated into a private use industrial  
3       property, ~~and on computer software acquired for use in the~~  
4       ~~operation of a data processing center,~~ the cost of which may  
5       be added to capital account with respect to the property,  
6       determined without regard to any rule which permits  
7       expenditures properly chargeable to capital account to be  
8       treated as current expenses. No abatement of construction  
9       related transaction taxes, or payments required to be made in  
10      lieu thereof, shall extend beyond the date the private use  
11      industrial property is placed in service; provided, however,  
12      that an abatement of construction related transaction taxes,  
13      or payments required to be made in lieu thereof, for a data  
14      processing center shall apply to all taxable services and  
15      acquisitions of real and personal property comprising the data  
16      processing center, the costs of which may be capitalized for  
17      federal income tax purposes, occurring at any time during the  
18      applicable maximum exemption period, including, but not  
19      limited to, computers, software licensed for use at the  
20      qualifying data processing center, equipment supporting  
21      computing, networking, or data storage; cooling systems,  
22      cooling towers, and other temperature infrastructure; power  
23      infrastructure for transformation, distribution, or management  
24      of electricity used for the maintenance and operation of a  
25      data processing center, including, but not limited to,

1 exterior dedicated business-owned substations, backup power  
2 generation systems, battery systems, and related  
3 infrastructure; and any other equipment necessary for the  
4 maintenance and operation of a data processing center. No  
5 further abatement may be granted for construction related  
6 transaction taxes, or payments required to be made in lieu  
7 thereof, with respect to the private use industrial property  
8 unless incurred in connection with a major addition, in which  
9 event only construction related transaction taxes, or payments  
10 required to be made in lieu thereof, that may be added to  
11 capital account with respect to the major addition, determined  
12 without regard to any rule which permits expenditures properly  
13 chargeable to capital account to be treated as current  
14 expenses, may be abated by complying with the procedures set  
15 forth in Act 92-599 as amended, and as amended by Act  
16 2008-275. Except in the case of a qualifying industrial or  
17 research enterprise described in Section 40-9B-3(a)(10)e.  
18 which is owned by an entity organized under Chapter 6 of Title  
19 37, or by an authority both organized and existing pursuant to  
20 Chapter 50A of Title 11, and subject to the payments required  
21 to be made in lieu of ad valorem, sales, use, license, and  
22 severance taxes imposed by Section 11-50A-7, no local  
23 construction related transaction taxes levied for educational  
24 purposes or capital improvements for education, or payments  
25 required to be made in lieu thereof, may be abated.

1           "(d) Mortgage and recording taxes with respect to  
2 mortgages, deeds, and documents relating to issuing or  
3 securing obligations and conveying title into or out of the  
4 public authority or county or municipal government with  
5 respect to a private use industrial property may be abated by  
6 complying with the procedures set forth in this chapter.

7           "(e) An abatement under this section may be granted  
8 only with respect to private use industrial property that has  
9 not previously been placed in service by the private user who  
10 is applying for the abatement or by a person who is a related  
11 party, as defined in 26 U.S.C. §267, with respect to such  
12 private user.

13           "(f) (1) For a qualifying industrial or research  
14 enterprise described in Section 40-9B-3(a)(10)e., which is  
15 owned by a utility described in Section 37-4-1(7)a., and which  
16 is a coal gasification or liquefaction project or an advanced  
17 fossil-based generation project, as such terms are defined in  
18 Section 40-18-1, or which utilizes hydropower production, an  
19 abatement under this section shall be in an amount equal to  
20 100 percent of the state noneducational ad valorem taxes owed  
21 for plant, property, and facilities for the maximum exemption  
22 period, and in an amount equal to 50 percent of the state  
23 construction related transaction taxes. The abatement shall  
24 not be subject to the procedures in Section 40-9B-5 or  
25 40-9B-6.

1           "(2) For a qualifying industrial or research  
2 enterprise described in Section 40-9B-3(a)(10)e., which is  
3 owned by a utility described in Section 37-4-1(7)a., and which  
4 is a project using an alternative energy resource the  
5 abatements for which are not provided in subdivision (1), an  
6 abatement under this section shall be in an amount equal to  
7 100 percent of the state noneducational ad valorem taxes owed  
8 for plant, property, and facilities for the maximum exemption  
9 period, and in an amount equal to 50 percent of the state  
10 construction related transaction taxes. The abatement shall  
11 not be subject to the procedures in Section 40-9B-5 or  
12 40-9B-6.

13           "(3) For a qualifying industrial or research  
14 enterprise described in Section 40-9B-3(a)(10)e., which is  
15 owned by an entity organized under Chapter 6 of Title 37, an  
16 abatement under this section shall be in an amount equal to  
17 100 percent of the ad valorem taxes owed for plant, property,  
18 and facilities for the maximum exemption period, and in an  
19 amount equal to 100 percent of the construction related  
20 transaction taxes. An abatement of ad valorem taxes levied or  
21 imposed by counties or municipalities may be granted as  
22 provided in subsection (h). An abatement of the construction  
23 related transaction taxes imposed by the governing body of a  
24 county pursuant to authority conferred under Article 1 of  
25 Chapter 12 of Title 40, or any general, special, or local act

1 of the Legislature, and such transaction taxes imposed by the  
2 governing body of a municipality pursuant to authority  
3 conferred under Article 3 of Chapter 51 of Title 11, or any  
4 general, special, or local act of the Legislature, and all  
5 transaction taxes imposed by any other local taxing  
6 jurisdiction of Alabama may be granted as provided in  
7 subsection (h). The abatement shall not be subject to the  
8 procedures in Section 40-9B-5 or 40-9B-6.

9 "(4) For a qualifying industrial or research  
10 enterprise described in Section 40-9B-3(a)(10)e., which is  
11 owned by an authority both organized and existing pursuant to  
12 Chapter 50A of Title 11, and subject to the payments required  
13 to be made in lieu of ad valorem, sales, use, license, and  
14 severance taxes imposed by Section 11-50A-7, an abatement  
15 under this section against the payments required to be made in  
16 lieu of taxes imposed by Section 11-50A-7, shall be allowed in  
17 an amount equal to 100 percent of the payments required to be  
18 made in lieu of ad valorem taxes owed for plant, property, and  
19 facilities for the maximum exemption period, and in an amount  
20 equal to 100 percent of the payments required to be made in  
21 lieu of the construction related transaction taxes, including,  
22 without limitation, payments required to be made in lieu of  
23 all transaction taxes imposed by the governing body of a  
24 county pursuant to authority conferred under Article 1 of  
25 Chapter 12 of this title, or any general, special, or local

1 act of the Legislature, all transaction taxes imposed by the  
2 governing body of a municipality pursuant to authority  
3 conferred under Article 3 of Chapter 51 of Title 11, or any  
4 general, special, or local act of the Legislature, and  
5 payments required to be made in lieu of all transaction taxes  
6 imposed by any other taxing jurisdiction of Alabama. The  
7 abatement of such payments required to be made in lieu of  
8 local taxes may be granted as provided in subsection (h). The  
9 abatement shall not be subject to the procedures in Section  
10 40-9B-5 or 40-9B-6.

11 "(5) For a qualifying industrial or research  
12 enterprise described in Section 40-9B-3(a)(10)e., which is  
13 owned by a utility described in Section 37-4-1(7)a., the  
14 abatement for state noneducational ad valorem taxes provided  
15 in subdivision (1) or (2) of this subsection, shall be equal  
16 to 100 percent of the state noneducational ad valorem taxes  
17 owed for plant, property, and facilities for the maximum  
18 exemption period if the industrial or research enterprise is  
19 located in either of the following:

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

23 "b. 1. Any Alabama county which is considered to be  
24 less developed. A county is considered to be less developed if  
25 it has been found to be less developed by the Alabama

1 Department of Industrial Relations using the most current data  
2 available from the United States Departments of Labor or  
3 Commerce, the United States Bureau of the Census, or any other  
4 federal or state agency, and which finding shall be made not  
5 later than January 1 of each year thereafter.

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

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

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

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

15 "3. The factors used in ranking counties shall be  
16 weighted in the following manner:

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

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

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

20 "(6) a. To the extent that a plant, property, or  
21 facility described in Section 40-9B-3(a)(10)e., is owned in  
22 whole or in part by one or more private users listed  
23 hereinafter in subparagraph c., including, but not limited to,  
24 ownership as tenants in common, joint tenants, or owners of an  
25 undivided interest, then each private user shall be entitled

1 to the abatement allowed under this section with a percentage  
 2 limitation equal to the ownership interest percentage of the  
 3 private user multiplied by the percentage limitation found in  
 4 this subsection applicable to the private user for the tax, or  
 5 payment in lieu of tax, in question.

6 "b. To the extent that a plant, property, or  
 7 facility described in Section 40-9B-3(a)(10)e. is owned by a  
 8 private user which is itself owned in whole or in part by one  
 9 or more of the entities listed hereinafter in subparagraph c.,  
 10 then the private user shall be entitled to the abatement  
 11 allowed under this section with a percentage limitation equal  
 12 to the sum, for all owners, of the ownership interest  
 13 percentage of each owner multiplied by the percentage  
 14 limitation found in this subsection applicable to the owner  
 15 for the tax, or payment in lieu of tax, in question.

16 "c. The entities listed in this subparagraph c. are:

17 "1. A utility described in Section 37-4-1(7)a.

18 "2. An entity organized under Chapter 6 of Title 37.

19 "3. An authority both organized and existing  
 20 pursuant to Chapter 50A of Title 11 and subject to the  
 21 payments required to be made in lieu of ad valorem, sales,  
 22 use, license, and severance taxes imposed by Section 11-50A-7.

23 "(7) No abatement for mortgage and recording taxes,  
 24 local noneducational ad valorem taxes, or local noneducational  
 25 construction related transaction taxes shall be granted to a



1 qualifying industrial or research enterprise described in  
 2 Section 40-9B-3(a)(10)e., owned by a utility described in  
 3 Section 37-4-1(7)a., except upon the approval of the abatement  
 4 by the governing body of the county or municipality as  
 5 provided in subsection (b) of Section 40-9B-5.

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

14 "(h) For a qualifying industrial or research  
 15 enterprise described in Section 40-9B-3(a)(10)e., the approval  
 16 of the abatement of a specific ad valorem tax or construction  
 17 related tax levied or imposed by a county or municipality, or  
 18 payments required to be made in lieu thereof, shall take  
 19 effect only upon adoption of a resolution by the governing  
 20 body of that county or municipality approving such abatement  
 21 or abatements.

22 "§40-18-190.

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

1           "(1) BASE WAGE REQUIREMENT.

2           "a. For qualifying projects in which an investing  
3 company files a written statement of intent (Form INT) with  
4 the department on or before May 21, 2009, "base wage  
5 requirement" means either an average hourly wage of not less  
6 than eight dollars (\$8) per hour or an average total  
7 compensation of not less than ten dollars (\$10) per hour,  
8 including benefits.

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

20           "c. For qualifying projects that are located in a  
21 favored geographic area and for which an investing company  
22 files a written statement of intent (Form INT) with the  
23 Department after May 21, 2009, "base wage requirement" means  
24 an average hourly wage, inclusive of all employees in Alabama,  
25 of not less than the lesser of twelve dollars (\$12) per hour

1 (indexed annually in accordance with the manner provided in  
2 Section 25-5-68) or the average hourly wage of the county  
3 where the qualifying project is located (as reported annually  
4 by the Department of Industrial Relations), both excluding  
5 benefits.

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

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

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

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

3            "c. The costs of contract bonds and of insurance of  
4 all kinds that may be required or necessary during the  
5 acquisition, construction, or installation of a qualifying  
6 project.

7            "d. The costs of architectural and engineering  
8 services, including test borings, surveys, estimates, plans  
9 and specifications, preliminary investigations, environmental  
10 mitigation and supervision of construction, as well as for the  
11 performance of all the duties required by or consequent upon  
12 the acquisition, construction, and installation of a  
13 qualifying project.

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

24           "f. All other costs of a nature comparable to those  
25 described, including, without limitation, all project costs

1 which are required to be capitalized for federal income tax  
2 purposes pursuant to 26 U.S.C. § 263A.

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

22 "h. Costs either paid or incurred by (i) a public  
23 industrial development board or authority, city, or county, or  
24 other public corporation or political subdivision (a "public  
25 entity") for the benefit of a qualifying project where such

1 costs are treated as costs paid by an investing company with  
2 respect to the qualifying project for federal income tax  
3 purposes (such costs shall not include amounts contributed by  
4 a public entity to a qualifying project as a capital  
5 contribution or gift except to the extent that an investing  
6 company has cost basis in the contribution or gift for federal  
7 income tax purposes); or (ii) a related party to an investing  
8 company to the extent such costs are included in or taken into  
9 account in determining the investing company's federal income  
10 tax basis in the qualifying project, whether or not incurred  
11 by an investing company.

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

22 "(4) DATA PROCESSING CENTER. An establishment  
23 engaged in the provision of complete processing and  
24 specialized reports from data, the provision of automated data  
25 processing and data entry services, the provision of an

1 infrastructure for hosting or data processing services, the  
2 provision of specialized hosting activities, the provision of  
3 application service provisioning, the provision of general  
4 time-share mainframe facilities, or some combination of the  
5 foregoing, without regard to whether any other activities are  
6 conducted at the establishment.

7 "(5) DEPARTMENT. The Alabama Department of Revenue.

8 "(6) FAVORED GEOGRAPHIC AREA. Either of the  
9 following:

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

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

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

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

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

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

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

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

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

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

12          "(7) HEADQUARTERS FACILITIES.

13          "a. For qualifying projects in which an investing  
14 company files a written statement of intent (Form INT) with  
15 the department on or before May 21, 2009, "headquarters  
16 facilities" means a facility which will serve as the national,  
17 regional or state headquarters for an investing company that  
18 conducts significant business operations outside the state and  
19 will serve as the principal office of the principal operating  
20 officer of the qualifying project. For purposes of this  
21 Article 7, the term "principal operating officer" is defined  
22 as the person with chief responsibility for the daily business  
23 operations of the qualifying project.

24          "b. For qualifying projects in which an investing  
25 company files a written statement of intent (Form INT) with



1 the department after May 21, 2009, "headquarters facilities"  
2 means any trade or business described in the 2007 North  
3 American Industry Classification System, promulgated by the  
4 Executive Office of the President of the United States, Office  
5 of Management and Budget, National Industry 551114.

6 "(8) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.

7 Any trade or business described in the 2007 North American  
8 Industry Classification System, promulgated by the Executive  
9 Office of the President of the United States, Office of  
10 Management and Budget, Sectors 31 (other than National  
11 Industry 311811), 32, and 33; Subsectors 423, 424, ~~493~~, 511,  
12 and 927; Industry Groups 5417, 5415, and 5182 (without regard  
13 to the premise that data processing and related services be  
14 performed in conjunction with a third-party); Industries 11331  
15 and 48691; and National Industries 115111, 517110, 541380, and  
16 561422 (other than establishments that originate telephone  
17 calls) and includes such trades and businesses as may be  
18 hereafter reclassified in any subsequent publication of the  
19 North American Industry Classification System or other  
20 industry classification system developed in conjunction with  
21 the United States Department of Commerce, or any process or  
22 treatment facility which recycles, reclaims, or converts  
23 materials, which include solids, liquids, or gases, to a  
24 reusable product.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           i. A project involving a warehousing or storage  
25 activity falling within Subsector 493 of the 2007 North

1 American Industry Classification System, where the project  
2 will provide logistics services related to the distribution of  
3 goods and the capital costs of which are not less than the  
4 following:

5 1. Five million dollars (\$5,000,000) if facility is  
6 not located in a favored geographic area.

7 2. One million dollars (\$1,000,000) if the facility  
8 is located in a favored geographic area.

9 "(14) RELATED PARTY. A person or entity that bears a  
10 relationship to an investing company described in Section  
11 267(b), (c), or (e) of the Internal Revenue Code of 1986, as  
12 amended.

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

15 "a. Produces electricity or natural gas, in whole or  
16 in part, from biofuels as such term is defined in Section  
17 2-2-90(c) (2) or from renewable energy resources as such term  
18 is defined in Section 40-18-1(30) with the exception that  
19 hydropower production shall be excluded from such definition;  
20 or

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

23 "(16) RESEARCH AND DEVELOPMENT FACILITY. An  
24 establishment engaged in conducting original investigations  
25 undertaken on a systematic basis to gain new knowledge or

1 applying research findings or other scientific knowledge to  
2 create new or significantly improved products or processes, or  
3 both.

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

11 "(18) TAX YEAR. The applicable taxable year as the  
12 term is defined in Section 40-18-1(36).

13 "(19) 1993 ACT. Act No. 93-851, H. 27 and Act No.  
14 93-852, H. 83 adopted at the 1993 First Special Session of the  
15 Legislature of Alabama, as amended by Act No. 94-370, S. 559  
16 adopted at the 1994 Regular Session of the Legislature of  
17 Alabama.

18 "(b) The amendments made to this section by Act  
19 2008-275 shall be effective for tax years and periods  
20 beginning after December 31, 2011.

21 "§40-18-193.

22 "(a) It shall be a condition to the receipt of a  
23 capital credit that:

24 "(1) For a qualifying project described in Section  
25 40-18-190(a)(13)c. ~~or f.~~, not less than 50 jobs for new

1 employees at the qualifying project be provided commencing  
 2 with the date which is not later than one year after the  
 3 qualifying project is placed in service and that the average  
 4 wages for all new employees at the qualifying project be not  
 5 less than the base wage requirement by the date which is not  
 6 later than one year after the qualifying project is placed in  
 7 service and during each year during which all or any part of  
 8 the capital credit is available with respect to the qualifying  
 9 project.

10 (2) For a qualifying project described in Section  
 11 40-18-190(a)(13)i., not less than 50 jobs for new employees at  
 12 the qualifying project be provided commencing with the date  
 13 which is not later than two years after the qualifying project  
 14 is placed in service and that the average wages for all new  
 15 employees at the qualifying project be not less than the base  
 16 wage requirement by the date which is not later than two years  
 17 after the qualifying project is placed in service and during  
 18 each year during which all or any part of the capital credit  
 19 is available with respect to the qualifying project.

20 ~~"(2)~~ (3) For any qualifying project other than a  
 21 qualifying project described in Sections 40-18-190(a)(13)c. or  
 22 ~~i. or f.~~, either of the following occur:

23 "a. Not less than 20 jobs for new employees at a  
 24 qualifying project except as otherwise provided in this  
 25 subdivision and commencing with the date which is not later

1 than one year after the qualifying project is placed in  
2 service and that the average wages for all new employees at  
3 the qualifying project be not less than the base wage  
4 requirement by the date which is not later than one year after  
5 the qualifying project is placed in service and during each  
6 year during which all or any part of the capital credit is  
7 available with respect to the qualifying project.

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

18 "c. Not less than five jobs for new employees at the  
19 qualifying project which is located in a favored geographic  
20 area and commencing with the date which is not later than one  
21 year after the qualifying project is placed in service and  
22 that the average wages for all new employees at the qualifying  
23 project be not less than the base wage, as defined in Section  
24 40-18-190(a) (1), requirement by the date which is not later  
25 than one year after the qualifying project is placed in



1 service and during each year during which all or part of the  
2 capital credit is available with respect to the qualifying  
3 project.

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

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

1 implemented and maintained with respect to the qualifying  
2 project.

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

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

23 "(e) A company shall be considered to have met the  
24 employment and wage requirements for the portion of the year  
25 following the date upon which such requirements are first met

1 and for each full year thereafter (such portion of a year and  
2 each full year thereafter during the 20 year credit period is  
3 hereinafter referred to as a "compliance year") if the  
4 employment requirement is satisfied for at least 11/12 of each  
5 compliance year and the wage requirement is met based on an  
6 average determined over each compliance year.

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

21 "(2) Any investing company that files a written  
22 statement of intent (Form INT) with the department after May  
23 21, 2009 and that meets the employment and wage requirements  
24 of this section by a date which is not later than one year  
25 after the date on which the qualifying project is placed in

1 service, but fails to meet such requirements in any subsequent  
2 compliance year, shall forfeit a percentage of the capital  
3 credits claimed in the prior five years. The forfeiture shall  
4 equal 100 percent of the capital credits claimed in the year  
5 immediately preceding the year in which the investing company  
6 fails to maintain the employment and wage requirements of this  
7 section. The forfeiture percentage shall be reduced by 20  
8 percent for each successive prior year in the five year  
9 forfeiture period. The forfeiture of capital credits shall be  
10 treated in the same manner as the imposition of the tax  
11 imposed by this chapter and shall be payable by the investing  
12 company on the fifteenth day of the third month following the  
13 close of the year in which the investing company failed to  
14 meet the employment and wage requirements of this section."

15 Section 3. In no event shall any incentive provided  
16 in this act be available to any company filing an application  
17 after December 31, 2018, unless this act is reauthorized  
18 pursuant to legislation in that year and once every five years  
19 succeeding the 2019 reauthorization. Any project granted  
20 incentive prior to December 31, 2018, shall be entitled to  
21 those incentives pursuant to the project agreement regardless  
22 of whether the act is reauthorized.

23 Section 4. The provisions of this act are severable.  
24 If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part  
2 which remains.

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

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 09-FEB-12.

Greg Pappas  
Clerk

Senate	<hr/> 05-APR-12 <hr/>	Amended and Passed
House	<hr/> 10-APR-12 <hr/>	Concurred in Sen- ate Amendment