

1 HB160
2 136243-1
3 By Representative Mask
4 RFD: Economic Development and Tourism
5 First Read: 07-FEB-12
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8 SYNOPSIS: This bill would make Legislative findings
9 regarding the use of economic incentives provided
10 to companies that undertake projects in the state
11 that create and retain jobs. This bill would allow
12 the State of Alabama to conduct public revenue
13 estimates and subsequently allow new and existing
14 companies which undertake certain qualifying
15 projects in Alabama to retain a percentage of state
16 income taxes withheld from eligible employees.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 To provide legislative findings; to provide
23 definitions; to allow Alabama companies which undertake
24 certain qualifying projects to retain a percentage of state
25 income taxes withheld from eligible employees.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the Alabama Job Creation and Retention Act of 2012.

3 Section 2. The Legislature makes the following
4 findings:

5 (a) The economic well-being of the citizens of the
6 state will be enhanced by the increased development and growth
7 of industry within the state and it is in the best interests
8 of the state to provide for certain incentives to allow the
9 state to promote such economic development through the
10 recruitment, retention, and expansion of quality projects
11 within the state.

12 (b) The incentives provided in this act will assist
13 the state in encouraging the retention of existing jobs that
14 may otherwise be terminated or displaced, and the creation of
15 new jobs which may not otherwise exist within the state, and
16 the incentives will help retain and create sources of tax
17 revenues for the state and its political subdivisions.

18 (c) The Alabama Development Office and the
19 Department of Revenue shall implement this act and exercise
20 all powers as authorized in this act; however, the application
21 of this act or the offering of any of its incentives as to any
22 particular approved company shall be in the sole discretion of
23 the Governor upon the written recommendation of the ADO
24 Director and the Director of Finance.

25 (d) The powers to be granted and the purposes to be
26 accomplished by this act are proper governmental and public
27 purposes and the inducement of the recruitment, retention, or

1 expansion of quality projects within the state is of paramount
2 importance.

3 (e) Nothing in this act shall be construed to
4 constitute a guarantee or assumption by the state of any debt
5 of any individual, company, corporation, or association nor to
6 authorize the credit of the state to be given, pledged, or
7 loaned to any individual, company, corporation, or
8 association.

9 (f) Nothing in this act gives any approved company
10 any right to the incentives authorized by this act unless the
11 incentives are approved by the Governor pursuant to this act.

12 (g) This act is intended to be revenue-neutral with
13 regard to employee withholdings and potential refunds.

14 Section 3. The following words and phrases shall
15 have the following meanings:

16 (1) ADO. The Alabama Development Office.

17 (2) APPROVED COMPANY. Any company recommended by the
18 ADO Director and the Director of Finance in writing and
19 approved by the Governor in writing pursuant to this act which
20 undertakes a qualifying project.

21 (3) CAPITAL COSTS. All costs and expenses incurred
22 by an approved company in connection with the acquisition,
23 construction, installation, and equipping of a qualifying
24 project during the period commencing with the date on which
25 such acquisition, construction, installation, and equipping
26 commences and ending on the date on which the qualifying

1 project is placed in service, including, without limitation,
2 all of the following:

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

7 b. The costs of acquiring land or rights in land.

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

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

25 e. All other costs of a nature comparable to those
26 described.

1 f. Costs otherwise defined as capital costs that are
2 incurred by the approved company where the approved company is
3 the lessee under a lease that: 1. has a term of not less than
4 five years, and 2. is characterized as a capital lease for
5 federal income tax purposes; provided, that if the project is
6 a headquarters facility with a lease term of not less than
7 five years, a research and development facility with a lease
8 term of not less than 10 years, or a project at which the
9 predominant trade or business activity conducted is described
10 in the 2007 North American Industry Classification System,
11 promulgated by the Executive Office of the President of the
12 United States, Office of Management and Budget, Sectors 31
13 (other than National Industry 311811), 32, and 33 with a lease
14 term of not less than 10 years, the lease may be characterized
15 as an operating lease for federal income tax purposes in which
16 event capital costs shall include the net present value of the
17 payments made by the approved company under the lease computed
18 using the applicable federal rate for the month in which the
19 qualifying project is placed in service and for the term most
20 closely approximating the term of the lease. Capital costs
21 shall not include property owned or leased by the approved
22 company or a related company before the commencement of the
23 acquisition, construction, installation, or equipping of the
24 qualifying project unless such property was physically located
25 outside the state for a period of at least one year prior to
26 the date on which the qualifying project was placed in
27 service.

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

14 (4) COMPANY. Any corporation, partnership, limited
15 liability company, proprietorship, trust, or other business
16 entity, regardless of form.

17 (5) DATA PROCESSING CENTER. An establishment engaged
18 predominantly in the provision of complete processing and
19 specialized reports from data, the provision of automated data
20 processing and data entry services, the provision of an
21 infrastructure for hosting of data processing services, the
22 provision of specialized hosting activities, the provision of
23 application service provisioning, the provision of general
24 time-share mainframe facilities, or some combination of the
25 foregoing.

26 (6) ELIGIBLE EMPLOYEES. Those persons, as set forth
27 in a qualifying project agreement, a. who are being paid

1 directly by an approved company for working at a qualifying
2 project for not less than 36 hours per work week, whose
3 workday is fully dedicated to the qualifying project, b. who
4 the approved company identifies as its employees to the U.S.
5 Internal Revenue Service, the Department of Revenue, or the
6 Department of Industrial Relations on returns or reports filed
7 with the foregoing, including, but not limited to, IRS Form
8 941, and c. who are eligible to participate under such benefit
9 plans as are generally applicable to employees holding
10 positions of like kind and character within either the
11 approved company or a related company whose employee benefits
12 are equivalent to or better than, from an employee
13 perspective, the approved company's employee benefits.

14 (7) FAVORED GEOGRAPHIC AREA. The definition in
15 Section 40-18-190, Code of Alabama 1975.

16 (8) HEADQUARTERS FACILITY. Any trade or business
17 described in the 2007 North American Industry Classification
18 System, promulgated by the Executive Office of the President
19 of the United States, Office of Management and Budget,
20 National Industry 551114.

21 (9) INCENTIVE PERIOD. The time period set forth in a
22 qualifying project agreement for which an approved company may
23 receive withholding incentives.

24 (10) INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.
25 Any trade or business described in the 2007 North American
26 Industry Classification System, promulgated by the Executive
27 Office of the President of the United States, Office of

1 Management and Budget, Sectors 31 (other than National
2 Industry 311811), 32, and 33; Subsectors 423, 424, 493, 511,
3 and 927; Industry Groups 5417, 5415, and 5182 (without regard
4 to the premise that data processing and related services be
5 performed in conjunction with a third party); Industries 11331
6 and 48691; and National Industries 115111, 517110, 541380, and
7 561422 (other than establishments that originate telephone
8 calls) and includes such trades and businesses as may be
9 hereafter added by an act of the Legislature, reclassified in
10 any subsequent publication of the North American Industry
11 Classification System or other industry classification system
12 developed in conjunction with the United States Department of
13 Commerce, or any process or treatment facility which recycles,
14 reclaims, or converts materials, which include solids,
15 liquids, or gases, to a reusable product.

16 (11) NEW OR EXPANSION PROJECT. A project meeting any
17 one of the following requirements:

18 a. A headquarters facility at which the predominant
19 trade or business activity conducted will not be the
20 production of electricity.

21 b. A data processing center.

22 c. A research and development facility.

23 d. A project at which the predominant trade or
24 business activity conducted will constitute industrial,
25 warehousing, or research activity or any other business
26 activity defined in Section 40-18-190, Code of Alabama 1975,

1 without regard to whether the minimum capital costs
2 requirement set forth for the activity is satisfied.

3 (12) PROJECT. Any land, building, or other
4 improvement, and all real and personal properties deemed
5 necessary or useful in connection therewith, whether or not
6 previously in existence, located or to be located in the
7 state.

8 (13) PUBLIC ENTITY. A public industrial development
9 board or authority, municipality, or county, or other public
10 corporation or political subdivision.

11 (14) QUALIFYING PROJECT. Any new or expansion
12 project or retention project to be undertaken by an approved
13 company. Any proposed qualifying project shall be
14 characterized, in the sole discretion of the Governor upon the
15 written recommendation of the ADO Director and the Director of
16 Finance, as either a new or expansion project or a retention
17 project. In making this characterization, the Governor may
18 consider any criteria which he or she considers to be
19 appropriate.

20 (15) QUALIFYING PROJECT AGREEMENT. An executed
21 agreement entered into between the state and an approved
22 company that describes the qualifying project and sets forth
23 the withholding incentives, the incentive period, the number
24 of eligible employees, any termination provisions or
25 provisions which allow the state to recapture withholding
26 incentives in the event the approved company fails to meet
27 certain minimum job or capital investment requirements, or

1 both, and any other terms and conditions which the state, in
2 its sole discretion, may require for an approved company to
3 qualify for and receive withholding incentives.

4 (16) RELATED COMPANY. Any company that is under
5 common management or control with an approved company.

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

12 (18) RETENTION PROJECT. A project, to be used as
13 part of an existing facility of a company located in the
14 state, meeting both of the following requirements:

15 a. The project is described in paragraphs a. through
16 d. of subdivision (11).

17 b. The capital costs of the project are not less
18 than the following:

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

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

23 (19) WITHHOLDING INCENTIVES. Incentives in the form
24 of the retention by an approved company of a percentage of
25 state income taxes withheld from eligible employees.

26 Section 4. (a) The ADO Director and the Director of
27 Finance shall determine, upon initial application on a form

1 approved by the ADO and the Department of Finance, whether to
2 recommend to the Governor, in writing, that a company be
3 approved as an approved company. In making their
4 determination, the ADO Director and the Director of Finance
5 may consider any criteria which they consider, in their sole
6 discretion, to be appropriate. The ADO Director and the
7 Director of Finance, in making their determination, shall
8 conduct a public revenue estimate with respect to a proposed
9 qualifying project and the withholding incentives proposed to
10 be granted by the Governor with respect thereto.

11 (b) After reviewing the recommendation of the ADO
12 Director and the Director of Finance, the Governor, in his or
13 her sole discretion, shall determine whether to approve, in
14 writing, a company as an approved company. In making his or
15 her determination, the Governor shall consider whether
16 approving a company as an approved company serves a valid
17 public purpose and is in the best interests of the citizens of
18 the state.

19 (c) After the Governor approves a company as an
20 approved company, the approved company must enter into a
21 qualifying project agreement with the state in order to
22 qualify for and receive withholding incentives. The state, in
23 its sole discretion, may require that an approved company meet
24 minimum job or capital investment requirements, or both, to
25 avoid the state recapturing withholding incentives or
26 terminating the qualifying project agreement.

1 Section 5. (a) An approved company that meets the
2 qualifications specified in this act shall qualify to receive
3 withholding incentives in an amount equal to:

4 (1) In the case of a new or expansion project, one
5 percent to 90 percent of the amount of state income taxes
6 withheld from eligible employees.

7 (2) In the case of a retention project, one percent
8 to 75 percent of the amount of state income taxes withheld
9 from eligible employees.

10 (b) The incentive period shall be determined in the
11 sole discretion of the Governor upon written recommendations
12 by the ADO Director and the Director of Finance, except that
13 in no event shall the incentive period exceed 20 years after a
14 qualifying project is placed in service.

15 (c) Withholding incentives shall be reduced or
16 eliminated with respect to a qualifying project at the time
17 the sum of all withholding incentives received with respect to
18 such qualifying project equals 100 percent of the capital
19 costs of such qualifying project, all to the end that the
20 aggregate amount of withholding incentives shall not exceed
21 100 percent of the capital costs of the qualifying project.

22 (d) An eligible employee is allowed a credit against
23 his or her state income taxes in an amount equal to 100
24 percent of the withholding incentives retained by an approved
25 company from his or her wages during the tax year.

26 (e) An approved company which enters into a
27 qualifying project agreement for withholding incentives with

1 the state may not claim the capital credit provided in Article
2 7, Chapter 18 of Title 40, Code of Alabama 1975, with respect
3 to such qualifying project.

4 Section 6. (a) Within 90 days after the end of a
5 calendar quarter for which an approved company has qualified
6 to receive a withholding incentive, the approved company shall
7 certify to the Department of Revenue, on a form approved by
8 the Department of Revenue, the actual number of eligible
9 employees for the calendar quarter, the payroll of eligible
10 employees for the calendar quarter, and any other information
11 required by the qualifying project agreement. The Department
12 of Industrial Relations shall verify the actual number of
13 eligible employees employed at the qualifying project during
14 the relevant calendar quarter. If the Department of Industrial
15 Relations is not able to provide such verification utilizing
16 all available resources, the Department of Revenue may request
17 such additional information from the approved company as may
18 be necessary. The Department of Revenue may audit any approved
19 company periodically to monitor compliance by the approved
20 company with this act.

21 (b) An approved company may receive withholding
22 incentives only in accordance with a qualifying project
23 agreement. If an approved company that is receiving
24 withholding incentives expands a qualifying project, it may
25 apply to the ADO and the Department of Revenue for additional
26 withholding incentives based on the new eligible employees.

1 Section 7. The ADO, the Department of Revenue, and
2 the Department of Finance, with the assistance of other
3 agencies, may adopt rules, in accordance with the
4 Administrative Procedure Act, and application forms and other
5 forms necessary to implement their respective duties and
6 responsibilities under this act.

7 Section 8. If a court of competent jurisdiction
8 adjudges invalid or unconstitutional any clause, sentence,
9 paragraph, section or part of this act, such judgment or
10 decree shall not affect, impair, invalidate, or nullify the
11 remainder of this act, but the effect of the decision shall be
12 confined to the clause, sentence, paragraph, section, or part
13 of this act adjudged to be invalid or unconstitutional.

14 Section 9. All laws or parts of laws which conflict
15 with this act are repealed.

16 Section 10. This act shall become effective
17 immediately following its passage and approval by the Governor
18 or its otherwise becoming law, and ratification by the people
19 of Alabama of the constitutional amendment proposed by House
20 Bill ____ or Senate Bill ____ [Act No. 2012-____] of the
21 Regular Session of 2012 of the Alabama Legislature. In the
22 event that the constitutional amendment proposed by House Bill
23 ____ or Senate Bill ____ [Act No. 2012-____] of the Regular
24 Session of 2012 of the Alabama Legislature is not ratified by
25 the people of Alabama, then this act shall be null and void.