

1 HB160
2 136243-2
3 By Representative Mask
4 RFD: Economic Development and Tourism
5 First Read: 07-FEB-12
6 PFD: 02/06/2012

1 the incentives will help retain and create sources of tax
2 revenues for the state and its political subdivisions.

3 (c) The Alabama Development Office and the
4 Department of Revenue shall implement this act and exercise
5 all powers as authorized in this act; however, the application
6 of this act or the offering of any of its incentives as to any
7 particular approved company shall be in the sole discretion of
8 the Governor upon the written recommendation of the ADO
9 Director and the Director of Finance.

10 (d) The powers to be granted and the purposes to be
11 accomplished by this act are proper governmental and public
12 purposes and the inducement of the recruitment, retention, or
13 expansion of quality projects within the state is of paramount
14 importance.

15 (e) Nothing in this act shall be construed to
16 constitute a guarantee or assumption by the state of any debt
17 of any individual, company, corporation, or association nor to
18 authorize the credit of the state to be given, pledged, or
19 loaned to any individual, company, corporation, or
20 association.

21 (f) Nothing in this act gives any approved company
22 any right to the incentives authorized by this act unless the
23 incentives are approved by the Governor pursuant to this act.

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

26 Section 3. The following words and phrases shall
27 have the following meanings:

1 (1) ADO. The Alabama Development Office.

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

6 (3) CAPITAL COSTS. All costs and expenses incurred
7 by an approved company in connection with the acquisition,
8 construction, installation, and equipping of a qualifying
9 project during the period commencing with the date on which
10 such acquisition, construction, installation, and equipping
11 commences and ending on the date on which the qualifying
12 project is placed in service, including, without limitation,
13 all of the following:

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

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

19 c. The costs of architectural and engineering
20 services, including test borings, surveys, estimates, plans
21 and specifications, preliminary investigations, environmental
22 mitigation, and supervision of construction, as well as for
23 the performance of all the duties required by or consequent
24 upon the acquisition, construction, and installation of a
25 qualifying project.

26 d. The costs associated with installation of
27 fixtures and equipment; surveys, including archaeological and

1 environmental surveys; site tests and inspections; subsurface
2 site work; excavation; removal of structures, roadways,
3 cemeteries, and other surface obstructions; filling, grading,
4 paving and provisions for drainage, storm water retention,
5 installation of utilities, including water, sewer, sewage
6 treatment, gas, electricity, communications, and similar
7 facilities; and off-site construction of utility extensions to
8 the boundaries of the property.

9 e. All other costs of a nature comparable to those
10 described.

11 f. Costs otherwise defined as capital costs that are
12 incurred by the approved company where the approved company is
13 the lessee under a lease that: 1. has a term of not less than
14 five years, and 2. is characterized as a capital lease for
15 federal income tax purposes; provided, that if the project is
16 a headquarters facility with a lease term of not less than
17 five years, a research and development facility with a lease
18 term of not less than 10 years, or a project at which the
19 predominant trade or business activity conducted is described
20 in the 2007 North American Industry Classification System,
21 promulgated by the Executive Office of the President of the
22 United States, Office of Management and Budget, Sectors 31
23 (other than National Industry 311811), 32, and 33 with a lease
24 term of not less than 10 years, the lease may be characterized
25 as an operating lease for federal income tax purposes in which
26 event capital costs shall include the net present value of the
27 payments made by the approved company under the lease computed

1 using the applicable federal rate for the month in which the
2 qualifying project is placed in service and for the term most
3 closely approximating the term of the lease. Capital costs
4 shall not include property owned or leased by the approved
5 company or a related company before the commencement of the
6 acquisition, construction, installation, or equipping of the
7 qualifying project unless such property was physically located
8 outside the state for a period of at least one year prior to
9 the date on which the qualifying project was placed in
10 service.

11 g. Costs either paid or incurred by 1. a public
12 entity for the benefit of a qualifying project where such
13 costs are treated as costs paid by an approved company with
14 respect to the qualifying project for federal income tax
15 purposes, such costs shall not include amounts contributed by
16 a public entity to a qualifying project as a capital
17 contribution or gift except to the extent that an approved
18 company has cost basis in the contribution or gift for federal
19 income tax purposes; or 2. a related company to an approved
20 company to the extent such costs are included in or taken into
21 account in determining the approved company's capital
22 expenditures in the qualifying project, whether or not
23 incurred by an approved company.

24 (4) COMPANY. Any corporation, partnership, limited
25 liability company, proprietorship, trust, or other business
26 entity, regardless of form.

1 (5) DATA PROCESSING CENTER. An establishment engaged
2 predominantly in the provision of complete processing and
3 specialized reports from data, the provision of automated data
4 processing and data entry services, the provision of an
5 infrastructure for hosting of data processing services, the
6 provision of specialized hosting activities, the provision of
7 application service provisioning, the provision of general
8 time-share mainframe facilities, or some combination of the
9 foregoing.

10 (6) ELIGIBLE EMPLOYEES. Those persons, as set forth
11 in a qualifying project agreement, a. who are being paid
12 directly by an approved company for working at a qualifying
13 project for not less than 36 hours per work week, whose
14 workday is fully dedicated to the qualifying project, b. who
15 the approved company identifies as its employees to the U.S.
16 Internal Revenue Service, the Department of Revenue, or the
17 Department of Industrial Relations on returns or reports filed
18 with the foregoing, including, but not limited to, IRS Form
19 941, and c. who are eligible to participate under such benefit
20 plans as are generally applicable to employees holding
21 positions of like kind and character within either the
22 approved company or a related company whose employee benefits
23 are equivalent to or better than, from an employee
24 perspective, the approved company's employee benefits.

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

1 (8) HEADQUARTERS FACILITY. Any trade or business
2 described in the 2007 North American Industry Classification
3 System, promulgated by the Executive Office of the President
4 of the United States, Office of Management and Budget,
5 National Industry 551114.

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

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

1 (11) NEW OR EXPANSION PROJECT. A new or expansion
2 project meeting any one of the following requirements:

3 a. A headquarters facility at which the predominant
4 trade or business activity conducted will not be the
5 production of electricity.

6 b. A data processing center.

7 c. A research and development facility.

8 d. A project at which the predominant trade or
9 business activity conducted will constitute industrial,
10 warehousing, or research activity or any other business
11 activity defined in Section 40-18-190, Code of Alabama 1975,
12 without regard to whether the minimum capital costs
13 requirement set forth for the activity is satisfied.

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

19 (13) PUBLIC ENTITY. A public industrial development
20 board or authority, municipality, or county, or other public
21 corporation or political subdivision.

22 (14) QUALIFYING PROJECT. Any new or expansion
23 project or retention project to be undertaken by an approved
24 company. Any proposed qualifying project shall be
25 characterized, in the sole discretion of the Governor upon the
26 written recommendation of the ADO Director and the Director of
27 Finance, as either a new or expansion project or a retention

1 project. In making this characterization, the Governor may
2 consider any criteria which he or she considers to be
3 appropriate.

4 (15) QUALIFYING PROJECT AGREEMENT. An executed
5 agreement entered into between the state and an approved
6 company that describes the qualifying project and sets forth
7 the withholding incentives, the incentive period, the number
8 of eligible employees, any termination provisions or
9 provisions which allow the state to recapture withholding
10 incentives in the event the approved company fails to meet
11 certain minimum job or capital investment requirements, or
12 both, and any other terms and conditions which the state, in
13 its sole discretion, may require for an approved company to
14 qualify for and receive withholding incentives.

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

17 (17) RESEARCH AND DEVELOPMENT FACILITY. An
18 establishment engaged predominantly in conducting original
19 investigations undertaken on a systematic basis to gain new
20 knowledge or applying research findings or other scientific
21 knowledge to create new or significantly improved products or
22 processes, or both.

23 (18) RETENTION PROJECT. A project, to be used as
24 part of an existing facility of a company located in the
25 state, meeting ~~both~~ all of the following requirements:

26 a. The project is described in paragraphs a. through
27 d. of subdivision (11).

1 b. The capital costs of the project are not less
2 than the following:

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

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

7 c. The project agrees to retain no less than 80
8 percent of the total number of eligible employees employed by
9 the approved company as of the date of execution of the
10 qualifying project agreement or, if located within a favored
11 geographic area, no less than 67 percent, for a period of at
12 least five years.

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

16 Section 4. (a) The ADO Director and the Director of
17 Finance shall determine, upon initial application on a form
18 approved by the ADO and the Department of Finance, whether to
19 recommend to the Governor, in writing, that a company be
20 approved as an approved company. In making their
21 determination, the ADO Director and the Director of Finance
22 may consider any criteria which they consider, in their sole
23 discretion, including a financial review of the company to
24 determine financial soundness and the need for a performance
25 bond, to be appropriate. The ADO Director and the Director of
26 Finance, in making their determination, shall conduct a public
27 revenue estimate with respect to a proposed qualifying project

1 and the withholding incentives proposed to be granted by the
2 Governor with respect thereto.

3 (b) After reviewing the recommendation of the ADO
4 Director and the Director of Finance, the Governor, in his or
5 her sole discretion, shall determine whether to approve, in
6 writing, a company as an approved company. In making his or
7 her determination, the Governor shall consider whether
8 approving a company as an approved company serves a valid
9 public purpose and is in the best interests of the citizens of
10 the state.

11 (c) After the Governor approves a company as an
12 approved company, the approved company must enter into a
13 qualifying project agreement with the state in order to
14 qualify for and receive withholding incentives. The state, in
15 its sole discretion, may require that an approved company meet
16 minimum job creation and job retention requirements or capital
17 investment requirements, or both, to avoid the state
18 recapturing withholding incentives or terminating the
19 qualifying project agreement.

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

23 (1) In the case of a new or expansion project, ~~one~~
24 ~~percent to 90 percent of~~ the amount of state income taxes
25 withheld from eligible new employees; shall be negotiated as
26 part of the agreement as follows:

1 a. For new or expansion projects that are not in a
2 favored geographical area:

3 1. Up to 50 percent for approved companies that
4 employ 50 to 250 employees.

5 2. Up to 90 percent for approved companies that
6 employ more than 250 employees.

7 b. For new or expansion projects in a favored
8 geographical area:

9 1. Up to 50 percent for approved companies that
10 employ 25 to 150 employees.

11 2. Up to 90 percent for approved companies that
12 employ more than 150 employees.

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

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

21 (c) Withholding incentives shall be reduced or
22 eliminated with respect to a qualifying project at the time
23 the sum of all withholding incentives received with respect to
24 such qualifying project equals 100 percent of the capital
25 costs of such qualifying project, all to the end that the
26 aggregate amount of withholding incentives shall not exceed
27 100 percent of the capital costs of the qualifying project.

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

5 (e) An approved company which enters into a
6 qualifying project agreement for withholding incentives with
7 the state may not claim the capital credit provided in Article
8 7, Chapter 18 of Title 40, Code of Alabama 1975, with respect
9 to such qualifying project.

10 (f) An approved company shall maintain the minimum
11 number of jobs set forth in the qualifying project agreement.
12 For a retention project, an approved company must maintain no
13 less than 80 percent of the total number of eligible employees
14 employed by the approved company as of the date of execution
15 of the qualifying project agreement or, if located within a
16 favorable geographic area, no less than 67 percent.

17 Section 6. (a) Within 90 days after the end of a
18 calendar quarter for which an approved company has qualified
19 to receive a withholding incentive, the approved company shall
20 certify to the Department of Revenue, on a form approved by
21 the Department of Revenue, the actual number of eligible
22 employees for the calendar quarter, the payroll of eligible
23 employees for the calendar quarter, and any other information
24 required by the qualifying project agreement. The Department
25 of Industrial Relations shall verify the actual number of
26 eligible employees employed at the qualifying project during
27 the relevant calendar quarter. If the Department of Industrial

1 Relations is not able to provide such verification utilizing
2 all available resources, the Department of Revenue may request
3 such additional information from the approved company as may
4 be necessary. The Department of Revenue may audit any approved
5 company periodically to monitor compliance by the approved
6 company with this act.

7 (b) An approved company may receive withholding
8 incentives only in accordance with a qualifying project
9 agreement. If an approved company that is receiving
10 withholding incentives expands a qualifying project, it may
11 apply to the ADO and the Department of Revenue for additional
12 withholding incentives based on the new eligible employees.

13 Section 7. The ADO, the Department of Revenue, and
14 the Department of Finance, with the assistance of other
15 agencies, may adopt rules, in accordance with the
16 Administrative Procedure Act, and application forms and other
17 forms necessary to implement their respective duties and
18 responsibilities under this act.

19 Section 8. Notwithstanding any other provision of
20 this act to the contrary, and in addition to any other
21 requirements included in this act, no withholding incentives
22 shall be provided pursuant to this act for any retention
23 project without the approval of the State Industrial
24 Development Authority.

25 Section 9. If a court of competent jurisdiction
26 adjudges invalid or unconstitutional any clause, sentence,
27 paragraph, section or part of this act, such judgment or

1 decree shall not affect, impair, invalidate, or nullify the
2 remainder of this act, but the effect of the decision shall be
3 confined to the clause, sentence, paragraph, section, or part
4 of this act adjudged to be invalid or unconstitutional.

5 Section 10. Notwithstanding the forgoing, no company
6 within this act shall engage in racial discrimination in
7 employment practices.

8 Section 11. All laws or parts of laws which conflict
9 with this act are repealed.

10 Section 12. This act shall become effective
11 immediately following its passage and approval by the Governor
12 or its otherwise becoming law, and ratification by the people
13 of Alabama of the constitutional amendment proposed by House
14 Bill ____ or Senate Bill ____ [Act No. 2012-____] of the
15 Regular Session of 2012 of the Alabama Legislature. In the
16 event that the constitutional amendment proposed by House Bill
17 ____ or Senate Bill ____ [Act No. 2012-____] of the Regular
18 Session of 2012 of the Alabama Legislature is not ratified by
19 the people of Alabama, then this act shall be null and void.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Economic Devel-
opment and Tourism..... 07-FEB-12

Read for the second time and placed
on the calendar..... 08-FEB-12

Read for the third time and passed
as amended..... 14-FEB-12

Yeas 69, Nays 19, Abstains 1

Greg Pappas
Clerk