

1 HB540
2 201085-3
3 By Representative Poole
4 RFD: Ways and Means Education
5 First Read: 02-MAY-19

1 ENGROSSED

2
3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To make legislative findings; to amend Sections
9 40-18-376, 40-18-376.1, 40-18-410, 40-18-411, 40-18-412,
10 40-18-413, and 40-18-414, Code of Alabama 1975; to add new
11 Sections 40-18-6.1, 40-18-8.1 and 40-18-376.3, Code of Alabama
12 1975; to add a new Article 2C to Chapter 10 of Title 41, Code
13 of Alabama 1975; to add new tools for the attraction of new
14 and expanding businesses in rural Alabama; to attract
15 high-tech companies to Alabama; to add new tools for the
16 attraction of new and expanding technology companies to
17 Alabama; to make various enhancements to Alabama's incentives
18 laws; to enhance Alabama's participation in the opportunity
19 zone program; to provide for the repeal of conflicting laws;
20 and to provide for an effective date.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. This bill shall be known as the "Alabama
23 Incentives Modernization Act."

24 Section 2. The Legislature finds as follows:

25 (a) While Alabama's incentive programs have
26 succeeded in growing industry in the more populated parts of

1 the State, Alabama's rural communities have not enjoyed the
2 same rates of success.

3 (b) Alabama's incentives grew out of a need to
4 attract heavy industry to the State. Now, Alabama must also
5 prepare for the future by attracting and retaining high-tech
6 companies, and preparing and retaining a workforce trained for
7 such jobs.

8 (c) New tools must be brought to bear to solve
9 Alabama's rural and high-tech deficits.

10 (d) It is a public purpose to expand Alabama's
11 incentives laws to attract and retain companies in rural
12 Alabama, and high-tech companies and workers throughout the
13 State. The tools used in this bill are urgently needed to
14 solve these problems.

15 (e) The Legislature finds that the enhancements to
16 the Alabama Jobs Act, as found in this bill, may be made
17 without compromising on the strict requirement that the state
18 shall not offer any such incentives to the extent that the tax
19 incentives sought exceed the anticipated revenues to the
20 state, as required by Section 40-18-373(1)c., Code of Alabama
21 1975.

22 Section 3. Sections 40-18-376, 40-18-376.1,
23 40-18-410, 40-18-411, 40-18-412, 40-18-413, and 40-18-414 are
24 amended to read as follows:

25 "§40-18-376.

26 "(a) If provided for in the project agreement, the
27 incentivized company is allowed an investment credit in an

1 annual amount equal to 1.5 percent of the capital investment
2 incurred as of the beginning of the incentive period, to be
3 used as follows:

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

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

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

11 "(4) To offset utility taxes; or

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

14 "The incentive period shall begin no earlier than
15 the placed-in-service date. The incentive period shall be 10
16 years. Should only some portion of a tax year be included in
17 the incentive period, the amount of the investment credit
18 shall be prorated on a daily basis.

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

23 "(1)a. The investment credit may be claimed as a
24 credit against the taxes in subsection (a) that are actually
25 paid. In any one year, if the credit exceeds the amount of
26 taxes that are allowed to be offset by the project agreement
27 and that are owed by the incentivized company, the

1 incentivized company may carry the credit forward, to the
2 extent allowed in the project agreement. No carryforward shall
3 be allowed for more than five years. Rules similar to those
4 used for Section 40-18-15.2 shall be applied.

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

13 "(2) The project agreement may authorize an
14 incentivized company that is taxed as a flow-through entity to
15 allocate the credit among some or all of the owners in any
16 manner specified, regardless of whether the allocation follows
17 rules similar to 26 U.S.C. § 704(b) and the regulations
18 thereunder. The owners may then use their allocated share of
19 the investment credit to offset any of the taxes listed in
20 subsection (a), as provided in subdivision (1). This
21 subdivision (2) shall be liberally construed to apply to
22 multiple levels of companies, to allow the investment credits
23 to be used by those persons bearing the tax burdens of the
24 qualifying project, and such companies shall include but shall
25 in no way be limited to flow-through entities, employee stock
26 ownership plans, mutual funds, real estate investment trusts,
27 and it shall also apply to offset the income tax liability of

1 employee/owners of a flow-through entity owned by an employee
2 stock ownership plan trust.

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

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

8 "b. No such transfer shall occur before the contract
9 is approved by the Secretary of Commerce. In determining
10 whether to approve any transfer, the Secretary shall make all
11 of the following findings:

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

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

18 "(iii) That the transfer is at a value of at least
19 85 percent of the present value of the credits. ~~and~~

20 ~~"(iv) That the incentivized company and the~~
21 ~~transferee are both subject to the tax listed in subsection~~
22 ~~(a)(1), are both subject to the tax listed in subsection~~
23 ~~(a)(2), or are both subject to the tax listed in subsection~~
24 ~~(a)(3).~~

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

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

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

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

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

19 "d. Upon receipt of the certifications from the
20 Department of Commerce as required by subsection (b)(3)c., the
21 Department of Revenue shall thereafter allow the appropriate
22 amount of the investment credit to offset the tax liability of
23 the transferee for any of the taxes listed in subsection (a).
24 A transferee may not make a subsequent transfer of the credit.

25 "e. If a credit is transferred, an incentivized
26 company that is later determined by the Secretary of Commerce
27 to have defaulted under the project agreement shall be liable

1 for the underpayment of tax attributable to the credit and for
2 penalties and interest thereon. Unless the purchase of the
3 credits is determined to have been made in a fraudulent
4 manner, or is a transfer in anticipation of bankruptcy,
5 insolvency or closure, a transferee shall not be liable for
6 the unpaid tax attributable to the credit, or for penalties or
7 interest thereon.

8 "(c) The realization methods in subsection (b) shall
9 not create debts of the state within the meaning of Section
10 213 of the Official ReCompilation of the Constitution of
11 Alabama of 1901, as amended.

12 "(d) (1) To the extent the investment credit is used
13 to offset a financial institution excise tax liability, in
14 making the report required by Section 40-16-6(d), the
15 financial institution receiving the investment credit shall
16 not take into account the qualifying project, and the
17 Department of Finance shall promulgate regulations to ensure
18 that the credit in no case would reduce the distribution for
19 municipalities and counties.

20 "(2) To the extent the investment credit is used to
21 offset an insurance premium tax liability, the Department of
22 Finance shall promulgate regulations to ensure that the credit
23 would reduce the distribution for the Education Trust Fund,
24 but in no case would the investment credit reduce the
25 distributions for the State General Fund or the Alabama
26 Special Mental Health Trust Fund.

1 "(3) To the extent the investment credit is used to
2 offset liability for the tax imposed by Section 40-21-82, the
3 Department of Finance shall promulgate regulations to ensure
4 that the credit in no case would reduce the distribution for
5 the Alabama Special Mental Health Trust Fund.

6 "§40-18-376.1.

7 "(a) The provisions in this section shall apply to
8 any targeted county, a term defined in this article to mean
9 any Alabama county that has a population of ~~2~~50,000 or less,
10 as determined by the Commissioner of Labor as of each January
11 1 using the most current data available from the United States
12 Departments of Labor or Commerce, the United States Bureau of
13 the Census, or any other federal or state agency or
14 department.

15 "(b) In making the findings required by Section
16 40-18-373(a), a company that proposes a qualifying project in
17 a targeted county shall be an approved company for purposes of
18 this section only if the Secretary of Commerce makes the
19 additional finding that the qualifying project will increase
20 the economic diversity of, or otherwise benefit, the targeted
21 county.

22 "(c) For purposes of determining in Section
23 40-18-372(2)b. whether a qualifying project may receive the
24 jobs act incentives, a project to be located in a targeted
25 county shall employ at least ~~25~~ ten new employees and shall
26 involve, directly or indirectly, at least \$2 million of

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

3 "(d) If the qualifying project is located in a
4 county which is deemed to be a targeted county on the date the
5 project agreement is executed, the following shall be
6 applicable:

7 "(1) The jobs credit provided in Section
8 40-18-375(a) shall be 4.0 percent of the wages paid to
9 eligible employees during the prior year; and

10 "(2) The investment credit provided in Section
11 40-18-376(a) shall have an incentive period of 15 years, ~~but~~
12 ~~only if the qualifying project is expected to sell the~~
13 ~~majority of its output or services to a business located in~~
14 ~~Alabama that is described in Section 40-18-372(a), so that the~~
15 ~~transit distance for the output or services shall be less than~~
16 ~~50 miles.~~

17 "(e) Each year, the incentives in subsection (d) may
18 be extended to no more than two qualifying projects not in
19 targeted counties. Such incentives shall be granted in project
20 agreements executed by the Governor on the recommendation of
21 the Secretary of Commerce.

22 "§40-18-410.

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

25 "(1) ECONOMIC DEVELOPMENT ORGANIZATION. A local
26 economic development organization or a state economic
27 development organization.

1 "~~(1)~~ (2) GROWING ALABAMA CREDIT. The credit provided
2 for in Section 40-18-413(a).

3 "~~(2)~~ (3) INDUSTRY OR BUSINESS. An entity which would
4 conduct at a site an activity that is primarily described in
5 Section 40-18-372(1).

6 "~~(3)~~ (4) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION.
7 Organizations which are determined by the Department of
8 Commerce to meet both of the following criteria:

9 "a. The organization is an Alabama entity not
10 operating for a profit, including, but not limited to, a
11 municipality or county, an industrial board or authority, a
12 chamber of commerce, or some other foundation or Alabama
13 nonprofit corporation charged with improving a community or
14 region of the state.

15 "b. The organization has a record of supporting or
16 otherwise participating in economic development activities in
17 some part of Alabama.

18 "~~(4)~~ (5) RENEWAL OF ALABAMA COMMISSION. The Renewal
19 of Alabama Commission created by Section 40-18-402.

20 "~~(5)~~ (6) SITE. Real property owned by a local
21 economic development organization and intended for use by an
22 industry or business.

23 "(7) STATE ECONOMIC DEVELOPMENT ORGANIZATION.
24 Organizations which are determined by the Department of
25 Commerce to be an Alabama entity not operating for a profit
26 which is charged with improving the state or a region of the
27 state.

1 "§40-18-411.

2 "(a) (1) A local economic development organization
3 which owns a site may apply to the Department of Commerce for
4 funding to solve an inadequacy involving the site. The
5 application by the local economic development organization
6 shall include at least one ~~or both~~ of the following:

7 "~~(1)~~ a. If there is a pending expression of interest
8 about the site from an industry or business, a list of the
9 site preparation or public infrastructure work needed to make
10 the site acceptable to the industry or business.

11 "~~(2)~~ b. If the site has been offered to one or more
12 industries or businesses but the offer did not result in the
13 industry or business locating on the site, a list of the site
14 preparation or public infrastructure work which, if it had
15 been completed, would have made the site acceptable to the
16 industries or businesses; or

17 "c. If the site is an industrial or research park
18 which needs connections to interstates, highways, roadways,
19 rail systems, or sewer, fiber, electrical, gas, or water
20 infrastructure, a list of the site preparation or
21 infrastructure work needed.

22 "(2) An economic development organization may apply
23 to the Department of Commerce for funding to undertake any of
24 the following issues:

25 "a. A marketing program to encourage persons trained
26 in fields related to science, technology, engineering, or
27 mathematics to remain in Alabama; provided that the

1 application is accompanied by an economic impact report on
2 such program;

3 "b. The creation, operation, or support of an
4 accelerator program for technology companies, as described in
5 Section 40-18-376.3(c) (2); provided that the application is
6 accompanied by an economic impact report on such program; or

7 "c. The construction, maintenance, promotion,
8 operation, management, leasing, and subleasing of an
9 Agricultural Center which includes a multi-use facility and
10 related commercial and non-commercial structures for
11 livestock, equestrian, small animal shows and events,
12 spectator events, trade shows, educational conferences,
13 agricultural and agricultural-related industries, educational,
14 demonstrational or training purposes, educational and training
15 conferences or events, recreational vehicle rallies,
16 recreational vehicle multi-day parking, hosting of corporate
17 and non-corporate organization meetings, use as fair grounds,
18 operation of retail activities, and other events and
19 facilities expected to draw participants and spectators from
20 states located across the southeastern United States, with a
21 projected total annual economic impact upon completion of all
22 phases of the Agricultural Center at least \$35,000,000 and
23 with the related and supporting infrastructure and facilities
24 having a projected capital expenditure upon completion of all
25 phases of the Agricultural Center of at least \$100,000,000;
26 provided that the application is accompanied by an economic
27 impact report on the Agricultural Center.

1 "(b) For any site preparation or public
2 infrastructure work ~~listed in an application to the Department~~
3 ~~of Commerce,~~ provided in subsection (a) (1), the application
4 shall include quotes for the completion of such work,
5 following compliance with the procedures set forth by the
6 Department of Economic and Community Affairs, as if the
7 organization were disbursing state funds received from such
8 department.

9 "(c) The application provided in subsection (a) (1)
10 shall include an estimate of the number of jobs, wages, and
11 capital investment which would have been undertaken by the
12 industries or businesses referred to in subsection (a).

13 "(d) The application provided in subsection (a)
14 shall include proof that the ~~local~~ economic development
15 organization has in full force and effect a conflict of
16 interest policy consistent with that found in the instructions
17 to Form 1023 issued by the Internal Revenue Service.

18 "(e) The application provided in subsection (a)
19 shall include a notarized affirmation by an officer of the
20 ~~local~~ economic development organization that the submission of
21 the application did not violate the conflict of interest
22 policy referred to in subsection (d).

23 "§40-18-412.

24 "(a) Following a review, if the Department of
25 Commerce should approve the application, provided in Section
26 40-18-411(a), it shall forward the application to the Renewal
27 of Alabama Commission.

1 "(b) The Renewal of Alabama Commission shall
2 consider the application and shall approve it if it deems it
3 worthy of approval. As to applications for projects located in
4 communities which have the potential to provide additional
5 funding separate from the Growing Alabama Credits, the
6 commission shall take into consideration whether such separate
7 funding is to be provided to the project which is the subject
8 of the application. Meetings of the commission are subject to
9 Chapter 25A of Title 36. Notwithstanding the foregoing, the
10 commission may meet by telephone or some other
11 telecommunications device so long as members of the public are
12 allowed the opportunity to listen to or otherwise observe the
13 commission's deliberations.

14 "(c) The approval of an application by the
15 commission shall specify the amount of money which the ~~local~~
16 economic development organization is allowed to receive so
17 that it can complete the ~~site preparation or public~~
18 ~~infrastructure~~ work specified in the application.

19 "(d) Following approval by the commission, the
20 Department of Commerce shall enter into an agreement with the
21 ~~local~~ economic development organization which shall do all of
22 the following:

23 "(1) Require the ~~local~~ economic development
24 organization to use funding received as a result of this law
25 only for the purposes approved by the commission as expressed
26 in the agreement.

1 "(2) Require the ~~local~~ economic development
2 organization to make periodic reports, not more often than
3 annually, to the Department of Commerce and the commission, as
4 required by the commission, on the disposition of the funds.
5 As to a project described in Section 40-18-411(a)(1), the
6 report shall include information on the marketing of the
7 site, and the ultimate use of the site until such time as it
8 makes a final report. As to a project described in Section
9 40-18-411(a)(2), the report shall include an economic impact
10 report.

11 "(3) Require the ~~local~~ economic development
12 organization to provide a review of its financial accounts as
13 directed by the Renewal of Alabama Commission.

14 "(e) For any approved applications, the Department
15 of Commerce shall notify the Department of Revenue of the
16 information specified in subsection (c).

17 "(f) The Department of Commerce shall publish on its
18 website a list of all approved applications, and, a list of
19 the economic development organizations which made the approved
20 applications.

21 "§40-18-413.

22 "(a) A taxpayer is allowed a Growing Alabama Credit
23 to be applied against the tax levied by this chapter. In no
24 event shall the Growing Alabama Credit cause a taxpayer's
25 income tax liability to be reduced by more than 50 percent.
26 Unused credits may be carried forward for no more than five
27 years.

1 "(b) Growing Alabama Credits shall be granted to
2 taxpayers using an online system administered by the
3 Department of Revenue. The online system shall allow taxpayers
4 to agree to make a cash contribution to ~~a local~~ an economic
5 development organization which was approved by the Renewal of
6 Alabama Commission, as provided in Section 40-18-412. The
7 online system shall ensure that credits are not granted for
8 contributions to ~~a local~~ an economic development organization
9 in excess of the amounts approved by the Renewal of Alabama
10 Commission, as provided in Section 40-18-412.

11 "(c) In no event shall Growing Alabama Credits be
12 allowed in excess of five million dollars (\$5,000,000) for
13 fiscal year 2016. In no event shall Growing Alabama Credits be
14 allowed in excess of ten million dollars (\$10,000,000) per
15 year for fiscal years 2017, 2018, 2019, and 2020.

16 "(d) The Renewal of Alabama Commission shall reserve
17 at least 25 percent of the amounts specified in subsection (c)
18 for projects in targeted counties described in Section
19 40-18-376.1.

20 "(e) To the extent that a Growing Alabama Credit is
21 used by a taxpayer, the taxpayer shall not be allowed any
22 deduction which would have otherwise been allowed for the
23 taxpayer's contribution. Credits may only be claimed by the
24 donating individual or corporate entity and may not be
25 assigned or transferred to any other taxpayer. A taxpayer may
26 not claim a credit for a donation made by any other entity,
27 including an entity taxed under subchapter S or subchapter K

1 of which the taxpayer is an owner, shareholder, partner, or
2 member.

3 "§40-18-414.

4 "(a) Upon receipt of funding provided by the tax
5 credit process in Section 40-18-413, the ~~local~~ economic
6 development organization shall proceed with the ~~site~~
7 ~~preparation or public infrastructure~~ work that was specified
8 in the application required by Section 40-18-411.

9 "(b) (1) As to a project described in Section
10 40-18-411(a) (1), the economic development organization shall
11 report to the Department of Commerce upon the completion of
12 the site preparation or public infrastructure work, upon the
13 transfer of the site to an industry or business, and at other
14 times as may be required or requested by the Department of
15 Commerce.

16 "(2) As to a project described in Section
17 40-18-411(a) (2), the ~~The local~~ economic development
18 organization shall report to the Department of Commerce upon
19 the completion of the ~~site preparation or public~~
20 ~~infrastructure work, upon the transfer of the site to an~~
21 ~~industry or business, and at other~~ work and at such times as
22 may be required or requested by the Department of Commerce.

23 "(c) The Department of Commerce shall make an annual
24 report on the use of funds pursuant to this article to the
25 Chair of the House Ways and Means Education Committee, the
26 Chair of the Senate Finance and Taxation Education Committee,
27 and the members of the Joint Legislative Advisory Committee on

1 Economic Incentives established by Section 40-18-379, at the
2 times, and in the manner, requested by the committee.
3 Beginning with the report for fiscal year 2019, the report
4 shall include a study of the economic impacts from the
5 expenditures made in prior years."

6 Section 4. New Sections 40-18-6.1 and 40-18-8.1 are
7 added to Article 1 of Chapter 18 of Title 40 to read as
8 follows:

9 Section 40-18-6.1.

10 (a) The provisions in 26 U.S.C. § 1400Z-2 shall be
11 applicable to an investment in an opportunity fund with at
12 least 75 percent of its qualified opportunity zone property,
13 by dollar value, located in Alabama. ~~The Department of Revenue~~
14 Alabama Department of Economic and Community Affairs shall
15 promulgate rules for determining whether a qualified
16 opportunity zone business is located in an Alabama opportunity
17 zone. This subsection (a) shall be applicable in calculating
18 each of the following:

19 (1) The income tax levied by this chapter, or the
20 estimated income tax payment; and

21 (2) The financial institution excise tax found in
22 Chapter 16.

23 (b) Any approved opportunity fund may enter into a
24 project agreement with ADECA to provide to such fund's
25 investors impact investment tax credits against any tax
26 liability described in paragraphs (1) and (2) of subsection
27 (a). Such impact investment tax credits shall be allocated

1 annually, but only to the extent that one or more projects
2 undertaken by the fund are not producing the returns provided
3 in the project agreement. The project agreement may authorize
4 the fund to allocate the credits among some or all of the
5 owners in any manner specified, regardless of whether the
6 allocation follows rules similar to 26 U.S.C. § 704(b) and the
7 regulations thereunder. Unused credits may carry forward for
8 ten years.

9 (c) The project agreement shall require an approved
10 opportunity fund to obtain investment from a qualified fund
11 and require that such qualified fund receive a fixed portion
12 of any distributions in excess of the amounts stated in the
13 project agreement.

14 (d) (1) In no event shall the credits allowed under
15 this section exceed \$50 million cumulatively. In no event
16 shall the credits be allocated during the first four years of
17 the existence of the fund, but credits may be allocated in the
18 fifth year to account for inadequate aggregate returns during
19 the first four years. Credits may not be allocated to projects
20 in which an approved opportunity fund has committed to invest
21 prior to the effective date of this act.

22 (2) The project agreement shall provide that ADECA
23 shall receive regular financial performance information about
24 the fund, and the information shall, at a minimum, include all
25 information provided to other investors in the fund. Prior to
26 claiming the credits provided in paragraph (1), a fund shall
27 submit to ADECA a certification as to the financial

1 performance of the fund or assets which are the subject of the
2 project agreement. ADECA may choose to request other
3 information, and the fund shall comply with such requests.
4 Following such examination as it deems necessary, ADECA may
5 certify the information and deliver the same to the Department
6 of Revenue. Thereafter, the Department of Revenue shall allow
7 the credits in the amount determined by ADECA.

8 (e) ADECA may charge reasonable fees for its
9 negotiation and entry into project agreements provided herein,
10 and it may charge fees for its financial and oversight audits
11 of such funds. ADECA may retain consultants to assist it with
12 the powers and responsibilities delegated to it herein.

13 (f) For purposes of this Section 40-18-6.1:

14 (1) "ADECA" shall mean the Department of Economic
15 and Community Affairs.

16 (2) An "approved opportunity fund" is a fund which
17 meets all the criteria in Section 41-10-47.01(b) (2).

18 (3) A "qualified fund" is a fund which meets all the
19 criteria in Section 41-10-47.01(b) (3).

20 (g) ADECA shall not enter into any project
21 agreements under this section after December 31, 2024.

22 Section 40-18-8.1.

23 (a) A qualified employee's gain shall not be
24 recognized upon the disposition of his or her ownership
25 interest in a qualified entity, and a qualified investment
26 fund's gain shall not be recognized upon the disposition of
27 the fund's ownership interest in a qualified entity.

1 (b) Subsection (a) shall be applied as to each of
2 the following taxes:

3 (1) The income tax levied by this chapter, or the
4 estimated income tax payment; and

5 (2) The financial institution excise tax found in
6 Chapter 16.

7 (c) The following terms shall have the following
8 meanings:

9 (1) A "company" is anyone or anything with the
10 powers to conduct a lawful business.

11 (2) The "disposition date" is the date on which an
12 ownership interest in a qualified entity is sold or otherwise
13 disposed of, triggering a capital gain.

14 (3) A "qualified entity" is any company which meets
15 all of the following:

16 a. As of the effective date of this act, Alabama is
17 not the company's headquarters, the place of residence of its
18 top three executives, or the place of residence of at least 75
19 percent of its employees;

20 b. The company has at least 100 employees on the
21 disposition date;

22 c. For a period of at least three years prior to the
23 disposition date and for a period of at least five years after
24 the disposition date, Alabama is the company's headquarters,
25 the place of residence of its top three executives, and the
26 place of residence of at least 75 percent of its employees;
27 and

1 d. From the date that the company makes Alabama its
2 headquarters and continuing until the date which is five years
3 after the disposition date, the company meets all criteria set
4 forth in Section 40-18-376.3(c).

5 A company shall not be eliminated from the
6 definition of a "qualified entity" merely because the
7 disposition is in the form of a sale of substantially all of
8 the assets of such company to a successor company, or in the
9 form of a merger of such company into a successor company, so
10 long as such successor company itself meets all criteria set
11 forth in subparagraphs a., b, and d., and if Alabama is such
12 successor company's headquarters, the place of residence of
13 its top three executives, and the place of residence of at
14 least 75 percent of its employees for a period of at least
15 five years after the disposition date.

16 (4) A "qualified employee" is any employee of a
17 qualified entity who meets all the following:

18 a. The employee's primary residence is not in
19 Alabama on the effective date of this act;

20 b. The employee's primary residence is in Alabama
21 continuously for the period beginning three years prior to the
22 disposition date and continuing for five years after the
23 disposition date;

24 c. Within three months of the disposition date, the
25 employee ceases employment at the qualified entity;

26 d. Within nine months of the disposition date, the
27 employee begins employment at or ownership or some other

1 company which meets all the criteria set forth in Section
2 40-18-376.3(c); and

3 ~~e. The employee has an educational degree in a field~~
4 ~~which the Department of Revenue determines by regulation to~~
5 ~~fall within the general areas of science, technology,~~
6 ~~engineering, and mathematics.~~

7 e. The employee demonstrates to Alabama Department
8 of Revenue that he or she has an educational degree within the
9 general areas of science, technology, engineering, and
10 mathematics.

11 (5) A "qualified investment fund" is any company
12 which meets all the following:

13 a. The fund made its investment in the qualified
14 entity after the effective date of this act; and

15 b. For a period of five years after the disposition
16 date, the fund invests the moneys resulting from the
17 disposition in another qualified entity.

18 (d) The Department of Revenue may assess a qualified
19 employee for any exclusion from income under this section to
20 which the employee is not ultimately entitled, with allowed
21 interest and penalties, pursuant to the terms of Chapter 2A or
22 29. The statute of limitations shall be tolled for a period of
23 ten years beginning on the date of the return under which the
24 exclusion from income in this section is claimed. The
25 Department of Revenue may prescribe forms for the enforcement
26 of this act.

1 Section 5. A new Section 40-18-376.3 is added to
2 Article 16 of Chapter 18 of Title 40 to read as follows:

3 (a) This section shall be applicable to a technology
4 company, as defined herein, so long as there is a project
5 agreement which provides that Alabama is or will become the
6 company's headquarters, the place of residence of its top 3
7 executives, and the place of residence of at least 75 percent
8 of its employees.

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

12 (1) A qualifying project shall be deemed to be in
13 existence notwithstanding the requirements of Section
14 40-18-372 so long as at least five new employees are employed
15 at the qualifying project, absent a finding of extraordinary
16 circumstances by the Secretary of Commerce; and

17 (2) The jobs credit provided in Section 40-18-375(a)
18 shall include an additional 2.0 percent above that otherwise
19 allowed.

20 (c) A "technology company" is any company which
21 meets all the criteria in paragraph (1) or paragraph (2):

22 (1) A company which earns at least 75 percent of its
23 revenues from any of the following:

24 a. Activities within subsector 518; industry group
25 5112, 5121 (other than 51213), 5415, or 5417; or industry
26 51913 of the 2012 North American Industry Classification
27 System, or any similar classification system developed in

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

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

9 1. any of the fields of education, healthcare,
10 energy, agriculture, infrastructure, software, robotics,
11 nutrition, aerospace, automotive, or financial services; or

12 2. any fields related to science, technology,
13 engineering, or mathematics.

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

18 Section 6. A new Article 2C is added to Chapter 10
19 of Title 41 to read as follows:

20 Article 2C.

21 Section 41-10-46.01

22 (a) Any qualified fund may invest at least three
23 percent of its corpus in one or more approved opportunity
24 funds.

25 (b) The following terms shall have the following
26 meanings:

1 (1) "ADECA" shall mean the Department of Economic
2 and Community Affairs.

3 (2) "Approved opportunity fund" shall mean any fund
4 approved by ADECA as meeting all of the following:

5 a. ADECA determines that the fund has the capacity
6 to improve Alabama's low-income opportunity zone communities
7 by approving an application showing all of the following:

8 1. the amount of existing committed capital or
9 potential to raise committed capital;

10 2. the investment track record or strength of the
11 applicant's management team;

12 3. the existing project pipeline or strategy for
13 developing new pipeline;

14 4. the fund structure and anticipated returns within
15 that fund structure;

16 5. the presence of sound legal, accounting, and
17 compliance policies and procedures;

18 6. a strategy for measuring, tracking, and annual
19 reporting to ADECA on how the approved opportunity fund is
20 achieving investment outcomes set forth in its applications;
21 and

22 7. one or more clear and demonstrable partnerships
23 with local or statewide public or nonprofit entities to ensure
24 community engagement.

25 b. ADECA determines that the fund has committed to
26 deploying a substantial portion of its capital into qualified

1 opportunity zone property in Alabama within one or more of the
2 following asset classes:

3 1. rural areas described in Section 40-18-376.1(a);

4 2. technology companies which meet all the criteria
5 in Section 40-18-376.3(c), or facilities to house such
6 companies;

7 3. companies or projects described in Section
8 40-18-372(1), or facilities to house such companies or
9 projects;

10 4. workforce training;

11 5. affordable housing, in which case the burden
12 shall be on the fund to demonstrate rent levels charged and
13 why those rents are appropriate for a particular geographic
14 area;

15 6. remediation of blighted or abandoned property, in
16 which case the burden shall be on the fund to demonstrate why
17 targeted properties qualify as blighted or abandoned;

18 7. revitalization of distressed urban neighborhoods,
19 in which case the burden shall be on the fund to demonstrate
20 why a neighborhood is distressed and why its investment
21 strategy will revitalize the neighborhood; or

22 8. companies or projects that will have substantial,
23 measurable impact on social, environmental, or economic
24 conditions in low-income areas, or facilities to house such
25 companies or projects, in which case the burden shall be on
26 the fund to demonstrate why such companies or projects will
27 have such substantial effects.

1 In addition, ADECA may determine that a fund meets
2 this subparagraph b. if it can demonstrate that it will create
3 substantial wealth within and for residents of Alabama's
4 low-income and rural communities and will directly track the
5 wealth created.

6 c. The fund commits to investing at least 75 percent
7 of its committed capital in qualified opportunity zone
8 property located in Alabama. The Department of Revenue shall
9 promulgate rules for determining whether an investment in a
10 corporation or partnership should be considered to be located
11 in Alabama. For purposes of this subparagraph c., "qualified
12 opportunity zone property" shall have the meaning given to it
13 in 26 U.S.C. § 1400Z-2(d)(2).

14 (3) "Qualified funds" are each of the following:

15 a. The Alabama Trust Fund created by Amendment No.
16 450 to the Constitution of Alabama of 1901;

17 b. The Alabama Game and Fish Fund created by Section
18 9-2-20, the Alabama Game and Fish Endowment Fund created by
19 Section 9-2-20.1, and the Alabama Nongame Wildlife Endowment
20 created by Section 9-2-20.2;

21 c. The Alabama Marine Resources Endowment Fund
22 created by Section 9-11-23 and the Marine Resources Fund
23 referred to therein;

24 d. The County Government Capital Improvement Fund
25 created by Section 11-29-4;

26 e. The Municipal Government Capital Improvement Fund
27 created by Section 11-66-4;

1 f. The Alabama Corrections Institution Finance
2 Authority funds referred to in Chapter 2 of Title 14;

3 g. The Public Health Finance Authority funds
4 described in Chapter 3A of Title 22;

5 h. The Public Road and Bridge funds described in
6 Chapter 6 of Title 23;

7 i. The Unemployment Compensation Trust Fund created
8 by Section 25-4-30;

9 j. The Mental Health Finance Authority funds
10 described in Article 11 of Chapter 10 of Title 41;

11 k. The Incentives Financing Authority funds
12 described in Division 1 of Article 16 of Chapter 10 of Title
13 41;

14 l. The Alabama Senior Services Trust Fund created by
15 Section 41-15C-1; and

16 m. Any fund of funds representing two or more of the
17 funds listed in subparagraphs a. through l.

18 (c) ADECA may charge application fees for the powers
19 and responsibilities delegated to it herein, and it may charge
20 fees for its financial and oversight audits of such funds.

21 ADECA may retain consultants to assist it with the powers and
22 responsibilities delegated to it herein.

23 Section 7. Both of the following shall be considered
24 industrial or research enterprises for purposes of Chapter 9B
25 of this Title 40, approved activities for purposes of Chapter
26 9G of this Title 40, and qualifying projects for purposes of
27 Article 16 of Chapter 18 of this Title 40:

1 (a) any trade or business predominately consisting
2 of an activity described in 40-18-376.3(c); and

3 (b) the Agricultural Center described in Section
4 40-18-411(a) (2)c.

5 For purposes of Article 16 of Chapter 18 of Title
6 40, the Governor may decrease the amounts and durations of the
7 jobs act incentives. The Department of Commerce may charge
8 fees for amendments to project agreements entered into under
9 Article 16 of Chapter 18 of Title 40.

10 As to the Agricultural Center described in Section
11 40-18-411(a) (2)c., all of the years of the investment credit
12 may be made transferable in the project agreement, using rules
13 similar to those provided in Section 40-18-376(b) (3).

14 Section 8. The departments of Economic and Community
15 Affairs, Revenue, Commerce, and Finance shall implement this
16 act, exercise all powers as authorized in this act, and
17 promulgate regulations to implement and administer the
18 provisions of this act.

19 Section 9. If a court of competent jurisdiction
20 adjudges invalid or unconstitutional any clause, sentence,
21 paragraph, section, or part of this Act, such judgment or
22 decree shall not affect, impair, invalidate, or nullify the
23 remainder of this Act, but the effect of the decision shall be
24 confined to the clause, sentence, paragraph, section, or part
25 of this Act adjudged to be invalid or unconstitutional.

26 Section 10. All laws or parts of laws which conflict
27 with this Act are repealed.

1 Section 11. This Act shall become effective sixty
2 days following its passage and approval by the Governor, or
3 following its otherwise becoming a law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
Education..... 02-MAY-19

Read for the second time and placed
on the calendar with 1 substitute
and..... 14-MAY-19

Read for the third time and passed
as amended..... 16-MAY-19

Yeas 98, Nays 0, Abstains 4

Jeff Woodard
Clerk