

1 HB540
2 200311-1
3 By Representative Poole
4 RFD: Ways and Means Education
5 First Read: 02-MAY-19

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8 SYNOPSIS: This bill would create the "Alabama
9 Incentives Modernization Act" to add new tools for
10 the attraction and expansion of businesses in rural
11 Alabama and high-tech companies throughout the
12 state.

13 For rural parts of the state, this bill
14 would enhance the Alabama Jobs Act incentives that
15 are available to companies locating or expanding in
16 rural Alabama; would extend the Alabama Jobs Act to
17 any rural project with at least five jobs; and
18 would extend the investment credit under the Jobs
19 Act to fifteen years. The bill would extend the
20 benefits of being a "rural" county to any county
21 with population less than 50,000. For all parts of
22 the state, the bill would allow banks and insurance
23 companies to purchase income tax credits and would
24 amend the definition of qualifying projects for
25 purposes of Alabama's incentives laws.

26 For high-tech companies, this bill would
27 enhance the Alabama Jobs Act incentives that are

1 available to such companies; would allow the state
2 to extend the Jobs Act incentives to any high tech
3 company creating at least five jobs; would allow
4 the investment tax credit calculation to include
5 operating costs as well as capital costs; and would
6 allow persons who move to Alabama to work in
7 Alabama's high-tech companies, as well as investors
8 in such companies, not to pay tax upon the
9 disposition of their ownership interests in the
10 companies.

11 The bill would expand the Opportunity Zone
12 program in Alabama. The bill would create an
13 Alabama capital gains tax reduction for investments
14 in opportunity zone funds predominately investing
15 in Alabama, in line with the federal Opportunity
16 Zone law. The bill would allow various state funds
17 to make investments into such opportunity zone
18 funds and would guarantee principal protection or
19 minimum rates of return for other investors in such
20 funds, so long as extraordinary returns are
21 allocated to such state funds.

22 The bill would enhance the Growing Alabama
23 Credits by creating funding mechanisms for
24 improving industrial parks, worker and student
25 retention, an Agricultural Center, and business
26 accelerators.

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 To make legislative findings; to amend Sections
6 40-18-376, 40-18-376.1, 40-18-410, 40-18-411, 40-18-412,
7 40-18-413, and 40-18-414, Code of Alabama 1975; to add new
8 Sections 40-18-6.1, 40-18-8.1 and 40-18-376.3, Code of Alabama
9 1975; to add a new Article 2D to Chapter 10 of Title 41, Code
10 of Alabama 1975; to add new tools for the attraction of new
11 and expanding businesses in rural Alabama; to attract
12 high-tech companies to Alabama; to add new tools for the
13 attraction of new and expanding technology companies to
14 Alabama; to make various enhancements to Alabama's incentives
15 laws; to enhance Alabama's participation in the opportunity
16 zone program; to provide for the repeal of conflicting laws;
17 and to provide for an effective date.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This bill shall be known as the "Alabama
20 Incentives Modernization Act."

21 Section 2. The Legislature finds as follows:

22 (a) While Alabama's incentive programs have
23 succeeded in growing industry in the more populated parts of
24 the State, Alabama's rural communities have not enjoyed the
25 same rates of success.

26 (b) Alabama's incentives grew out of a need to
27 attract heavy industry to the State. Now, Alabama must also

1 prepare for the future by attracting and retaining high-tech
2 companies, and preparing and retaining a workforce trained for
3 such jobs.

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

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

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

18 Section 3. Sections 40-18-376, 40-18-376.1,
19 40-18-410, 40-18-411, 40-18-412, 40-18-413, and 40-18-414 are
20 amended to read as follows:

21 "§40-18-376.

22 "(a) If provided for in the project agreement, the
23 incentivized company is allowed an investment credit in an
24 annual amount equal to 1.5 percent of the capital investment
25 incurred as of the beginning of the incentive period, to be
26 used as follows:

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

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

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

8 "(4) To offset utility taxes; or

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

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

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

20 "(1)a. The investment credit may be claimed as a
21 credit against the taxes in subsection (a) that are actually
22 paid. In any one year, if the credit exceeds the amount of
23 taxes that are allowed to be offset by the project agreement
24 and that are owed by the incentivized company, the
25 incentivized company may carry the credit forward, to the
26 extent allowed in the project agreement. No carryforward shall

1 be allowed for more than five years. Rules similar to those
2 used for Section 40-18-15.2 shall be applied.

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

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

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

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

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

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

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

16 "(iii) That the transfer is at a value of at least
17 85 percent of the present value of the credits. ~~and~~

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

23 "Upon making affirmative findings on the criteria
24 set forth above, the Secretary of Commerce shall recommend to
25 the Governor that the transfer should be approved. Information
26 about the proposed transfer shall be forwarded to the
27 Governor, and the Governor may include provisions about the

1 transfer in the project agreement, or in an amendment thereto
2 executed by the Governor and the incentivized company.

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

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

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

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

23 "e. If a credit is transferred, an incentivized
24 company that is later determined by the Secretary of Commerce
25 to have defaulted under the project agreement shall be liable
26 for the underpayment of tax attributable to the credit and for
27 penalties and interest thereon. Unless the purchase of the

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

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

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

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

25 "(3) To the extent the investment credit is used to
26 offset liability for the tax imposed by Section 40-21-82, the
27 Department of Finance shall promulgate regulations to ensure

1 that the credit in no case would reduce the distribution for
2 the Alabama Special Mental Health Trust Fund.

3 "§40-18-376.1.

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

12 "(b) In making the findings required by Section
13 40-18-373(a), a company that proposes a qualifying project in
14 a targeted county shall be an approved company for purposes of
15 this section only if the Secretary of Commerce makes the
16 additional finding that the qualifying project will increase
17 the economic diversity of, or otherwise benefit, the targeted
18 county.

19 "(c) For purposes of determining in Section
20 40-18-372(2)b. whether a qualifying project may receive the
21 jobs act incentives, a project to be located in a targeted
22 county shall employ at least ~~25~~ five new employees, absent a
23 finding of extraordinary circumstances by the Secretary of
24 Commerce.

25 "(d) If the qualifying project is located in a
26 county which is deemed to be a targeted county on the date the

1 project agreement is executed, the following shall be
2 applicable:

3 "(1) The jobs credit provided in Section
4 40-18-375(a) shall be 4.0 percent of the wages paid to
5 eligible employees during the prior year; and

6 "(2) The investment credit provided in Section
7 40-18-376(a) shall have an incentive period of 15 years, ~~but~~
8 ~~only if the qualifying project is expected to sell the~~
9 ~~majority of its output or services to a business located in~~
10 ~~Alabama that is described in Section 40-18-372(a), so that the~~
11 ~~transit distance for the output or services shall be less than~~
12 ~~50 miles.~~

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

18 "§40-18-410.

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

21 "(1) ECONOMIC DEVELOPMENT ORGANIZATION. A local
22 economic development organization or a state economic
23 development organization.

24 "~~(1)~~ (2) GROWING ALABAMA CREDIT. The credit provided
25 for in Section 40-18-413(a).

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

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

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

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

16 "~~(4)~~ (5) RENEWAL OF ALABAMA COMMISSION. The Renewal
17 of Alabama Commission created by Section 40-18-402.

18 "~~(5)~~ (6) SITE. Real property owned by a local
19 economic development organization and intended for use by an
20 industry or business.

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

26 "§40-18-411.

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

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

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

16 "c. If the site is an industrial park which needs
17 connections to interstates, highways, roadways, rail systems,
18 or sewer, fiber, electrical, gas, or water infrastructure.

19 "(2) An economic development organization may apply
20 to the Department of Commerce for funding to undertake any of
21 the following issues:

22 "a. A marketing program to encourage persons trained
23 in fields related to science, technology, engineering, or
24 mathematics to remain in Alabama;

25 "b. The creation, operation, or support of an
26 accelerator program for technology companies, as described in
27 Section 40-18-376.3(c) (2); or

1 "c. The construction, maintenance, promotion,
2 operation, management, leasing, and subleasing of an
3 Agricultural Center which includes a multi-use facility and
4 related commercial and non-commercial structures for
5 livestock, equestrian, small animal shows and events,
6 spectator events, trade shows, educational conferences,
7 agricultural and agricultural-related industries, educational,
8 demonstrational or training purposes, educational and training
9 conferences or events, recreational vehicle rallies,
10 recreational vehicle multi-day parking, hosting of corporate
11 and non-corporate organization meetings, use as fair grounds,
12 operation of retail activities, and other events and
13 facilities expected to draw participants and spectators from
14 states located across the southeastern United States, with a
15 projected total annual economic impact upon completion of all
16 phases of the Agricultural Center at least \$35,0000,000 and
17 with the related and supporting infrastructure and facilities
18 having a projected capital expenditure upon completion of all
19 phases of the Agricultural Center of at least \$100,000,000.

20 "(b) For any site preparation or public
21 infrastructure work ~~listed in an application to the Department~~
22 ~~of Commerce,~~ provided in subsection (a) (1), the application
23 shall include quotes for the completion of such work,
24 following compliance with the procedures set forth by the
25 Department of Economic and Community Affairs, as if the
26 organization were disbursing state funds received from such
27 department.

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

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

10 "(e) The application provided in subsection (a)
11 shall include a notarized affirmation by an officer of the
12 ~~local~~ economic development organization that the submission of
13 the application did not violate the conflict of interest
14 policy referred to in subsection (d).

15 "§40-18-412.

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

20 "(b) The Renewal of Alabama Commission shall
21 consider the application and shall approve it if it deems it
22 worthy of approval. As to applications for projects located in
23 communities which have the potential to provide additional
24 funding separate from the Growing Alabama Credits, the
25 commission shall take into consideration whether such separate
26 funding is to be provided to the project which is the subject
27 of the application. Meetings of the commission are subject to

1 Chapter 25A of Title 36. Notwithstanding the foregoing, the
2 commission may meet by telephone or some other
3 telecommunications device so long as members of the public are
4 allowed the opportunity to listen to or otherwise observe the
5 commission's deliberations.

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

11 "(d) Following approval by the commission, the
12 Department of Commerce shall enter into an agreement with the
13 ~~local~~ economic development organization which shall do all of
14 the following:

15 "(1) Require the ~~local~~ economic development
16 organization to use funding received as a result of this law
17 only for the purposes approved by the commission as expressed
18 in the agreement.

19 "(2) Require the ~~local~~ economic development
20 organization to make periodic reports, not more often than
21 annually, to the Department of Commerce and the commission, as
22 required by the commission, on the disposition of the funds.
23 As to a project described in Section 40-18-411(a)(1), the
24 report shall include information on the marketing of the
25 site, and the ultimate use of the site until such time as it
26 makes a final report.

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

4 "(e) For any approved applications, the Department
5 of Commerce shall notify the Department of Revenue of the
6 information specified in subsection (c).

7 "(f) The Department of Commerce shall publish on its
8 website a list of all approved applications, the approved
9 applications themselves, a list of the economic development
10 organizations which made the approved applications, and the
11 reports required by Section 40-18-414(b).

12 "§40-18-413.

13 "(a) A taxpayer is allowed a Growing Alabama Credit
14 to be applied against the tax levied by this chapter. In no
15 event shall the Growing Alabama Credit cause a taxpayer's
16 income tax liability to be reduced by more than 50 percent.
17 Unused credits may be carried forward for no more than five
18 years.

19 "(b) Growing Alabama Credits shall be granted to
20 taxpayers using an online system administered by the
21 Department of Revenue. The online system shall allow taxpayers
22 to agree to make a cash contribution to ~~a local~~ an economic
23 development organization which was approved by the Renewal of
24 Alabama Commission, as provided in Section 40-18-412. The
25 online system shall ensure that credits are not granted for
26 contributions to ~~a local~~ an economic development organization

1 in excess of the amounts approved by the Renewal of Alabama
2 Commission, as provided in Section 40-18-412.

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

8 "(d) The Renewal of Alabama Commission shall reserve
9 at least 25 percent of the amounts specified in subsection (c)
10 for projects in targeted counties described in Section
11 40-18-376.1.

12 "(e) To the extent that a Growing Alabama Credit is
13 used by a taxpayer, the taxpayer shall not be allowed any
14 deduction which would have otherwise been allowed for the
15 taxpayer's contribution. Credits may only be claimed by the
16 donating individual or corporate entity and may not be
17 assigned or transferred to any other taxpayer. A taxpayer may
18 not claim a credit for a donation made by any other entity,
19 including an entity taxed under subchapter S or subchapter K
20 of which the taxpayer is an owner, shareholder, partner, or
21 member.

22 "§40-18-414.

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

1 "(b) The ~~local~~ economic development organization
2 shall report to the Department of Commerce upon the completion
3 of the ~~site preparation or public infrastructure work, upon~~
4 ~~the transfer of the site to an industry or business, and at~~
5 ~~other~~ work and at such times as may be required or requested
6 by the Department of Commerce.

7 "(c) The Department of Commerce shall make an annual
8 report on the use of funds pursuant to this article to the
9 Chair of the House Ways and Means Education Committee, the
10 Chair of the Senate Finance and Taxation Education Committee,
11 and the members of the Joint Legislative Advisory Committee on
12 Economic Incentives established by Section 40-18-379, at the
13 times, and in the manner, requested by the committee.
14 Beginning with the report for fiscal year 2019, the report
15 shall include a study of the economic impacts from the
16 expenditures made in prior years."

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

20 Section 40-18-6.1.

21 (a) The provisions in 26 U.S.C. § 1400Z-2 shall be
22 applicable to an investment in an opportunity fund with at
23 least 75 percent of its qualified opportunity zone property,
24 by dollar value, located in Alabama. The department shall
25 promulgate rules for determining whether an investment in a
26 corporation or partnership should be considered to be located

1 in Alabama. This subsection (a) shall be applicable in
2 calculating each of the following:

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 (b) Any approved opportunity fund may enter into a
8 project agreement with ADECA to provide to such fund's
9 investors impact investment tax credits against any tax
10 liability described in paragraphs (1) and (2) of subsection
11 (a). Such impact investment tax credits shall be allocated
12 annually, but only to the extent that one or more projects
13 undertaken by the fund are not producing the returns provided
14 in the project agreement. The project agreement may authorize
15 the fund to allocate the credits among some or all of the
16 owners in any manner specified, regardless of whether the
17 allocation follows rules similar to 26 U.S.C. § 704(b) and the
18 regulations thereunder. Unused credits may carry forward for
19 twenty years.

20 (c) The project agreement shall require an approved
21 opportunity fund to obtain investment from a qualified fund
22 and require that such qualified fund receive a fixed portion
23 of any distributions in excess of the amounts stated in the
24 project agreement.

25 (d) In no event shall the credits allowed under this
26 section exceed \$50 million. In no event shall the credits be
27 allocated during the first four years of the existence of the

1 fund, but credits may be allocated in the fifth year to
2 account for inadequate aggregate returns during the first four
3 years. Credits may not be allocated to projects in which an
4 approved opportunity fund has committed to invest prior to the
5 effective date of this act.

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

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

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

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

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

18 Section 40-18-8.1.

19 (a) A qualified employee's gain shall not be
20 recognized upon the disposition of his or her ownership
21 interest in a qualified entity, and a qualified investment
22 fund's gain shall not be recognized upon the disposition of
23 the fund's ownership interest in a qualified entity.

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

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

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

3 (c) The following terms shall have the following
4 meanings:

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

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

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

12 a. As of the effective date of this act, Alabama is
13 not the company's headquarters, the place of residence of its
14 top three executives, or the place of residence of at least 75
15 percent of its employees;

16 b. The company has at least 100 employees on the
17 disposition date;

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

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

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

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

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

16 b. The employee's primary residence is in Alabama
17 continuously for the period beginning three years prior to the
18 disposition date and continuing for five years after the
19 disposition date;

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

22 d. Within nine months of the disposition date, the
23 employee begins employment at or ownership or some other
24 company which meets all the criteria set forth in Section
25 40-18-376.3(c); and

26 e. The employee has an educational degree in a field
27 which the Secretary of Commerce determines by regulation to

1 fall within the general areas of science, technology,
2 engineering, and mathematics.

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

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

7 b. For a period of five years after the disposition
8 date, the fund invests the moneys resulting from the
9 disposition in another qualified entity.

10 (d) The department may assess a qualified employee
11 for any exclusion from income under this section to which the
12 employee is not ultimately entitled, with allowed interest and
13 penalties, pursuant to the terms of Chapter 2A or 29. The
14 statute of limitations shall be tolled for a period of ten
15 years beginning on the date of the return under which the
16 exclusion from income in this section is claimed. The
17 Department may prescribe forms for the enforcement of this
18 act.

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

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

1 (b) The following shall be allowed to any company
2 which meets all the criteria in subsection (a):

3 (1) A qualifying project shall be deemed to be in
4 existence notwithstanding the requirements of Section
5 40-18-372 so long as at least five new employees are employed
6 at the qualifying project, absent a finding of extraordinary
7 circumstances by the Secretary of Commerce;

8 (2) The investment credit provided in Section
9 40-18-376 shall be an annual amount equal to 1.5 percent of
10 all the technology company's costs and expenses incurred in
11 connection with the operation of the technology company after
12 the execution of the project agreement, whether or not such
13 costs and expenses are required to be capitalized; and

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

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

18 a. Activities within subsector 518; industry group
19 5112, 5121 (other than 51213), 5415, or 5417; or industry
20 51913 of the 2012 North American Industry Classification
21 System, or any similar classification system developed in
22 conjunction with the United States Department of Commerce or
23 Office of Management and Budget;

24 b. The use of technology to develop new coding or
25 processes for the creation or delivery of goods or services in
26 the following fields, or any additional activities determined
27 by the Secretary of Commerce to be beneficial to the

1 enhancement of businesses rooted in any of the following
2 fields:

3 1. any of the fields of education, healthcare,
4 energy, agriculture, infrastructure, software, robotics,
5 nutrition, aerospace, automotive, or financial services; or

6 2. any fields related to science, technology,
7 engineering, or mathematics.

8 (2) A company which fosters the growth and
9 development of other technology companies through the use of a
10 business accelerator program in Alabama.

11 Section 6. A new Article 2D is added to Chapter 10
12 of Title 41 to read as follows:

13 Article 2D.

14 Section 41-10-47.01

15 (a) Any qualified fund may invest at least three
16 percent of its corpus in one or more approved opportunity
17 funds.

18 (b) The following terms shall have the following
19 meanings:

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

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

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

- 1 1. the amount of existing committed capital or
2 potential to raise committed capital;
- 3 2. the investment track record or strength of the
4 applicant's management team;
- 5 3. the existing project pipeline or strategy for
6 developing new pipeline;
- 7 4. the fund structure and anticipated returns within
8 that fund structure;
- 9 5. the presence of sound legal, accounting, and
10 compliance policies and procedures;
- 11 6. a strategy for measuring, tracking, and annual
12 reporting to ADECA on how the approved opportunity fund is
13 achieving investment outcomes set forth in its applications;
14 and
- 15 7. one or more clear and demonstrable partnerships
16 with local or statewide public or nonprofit entities to ensure
17 community engagement.

18 b. ADECA determines that the fund has committed to
19 deploying a substantial portion of its capital into qualified
20 opportunity zone property in Alabama within one or more of the
21 following asset classes:

- 22 1. rural areas described in Section 40-18-376.1(a);
- 23 2. technology companies which meet all the criteria
24 in Section 40-18-376.3(c), or facilities to house such
25 companies;

1 3. companies or projects described in Section
2 40-18-372(1), or facilities to house such companies or
3 projects;

4 4. workforce training;

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

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

12 7. revitalization of distressed urban neighborhoods,
13 in which case the burden shall be on the fund to demonstrate
14 why a neighborhood is distressed and why its investment
15 strategy will revitalize the neighborhood; or

16 8. companies or projects that will have substantial,
17 measurable impact on social, environmental, or economic
18 conditions in low-income areas, or facilities to house such
19 companies or projects, in which case the burden shall be on
20 the fund to demonstrate why such companies or projects will
21 have such substantial effects.

22 In addition, ADECA may determine that a fund meets
23 this subparagraph b. if it can demonstrate that it will create
24 substantial wealth within and for residents of Alabama's
25 low-income and rural communities and will directly track the
26 wealth created.

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

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

10 a. The Alabama Trust Fund created by Amendment No.
11 450 to the Constitution of Alabama of 1901;

12 b. The Alabama Game and Fish Fund created by Section
13 9-2-20, the Alabama Game and Fish Endowment Fund created by
14 Section 9-2-20.1, and the Alabama Nongame Wildlife Endowment
15 created by Section 9-2-20.2;

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

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

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

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

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

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

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

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

7 k. The Incentives Financing Authority funds
8 described in Division 1 of Article 16 of Chapter 10 of Title
9 41;

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

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

14 (c) ADECA may charge application fees for the powers
15 and responsibilities delegated to it herein, and it may charge
16 fees for its financial and oversight audits of such funds.
17 ADECA may retain consultants to assist it with the powers and
18 responsibilities delegated to it herein.

19 Section 7. Both of the following shall be considered
20 industrial or research enterprises for purposes of Chapter 9B
21 of this Title 40, approved activities for purposes of Chapter
22 9G of this Title 40, and qualifying projects for purposes of
23 Article 16 of Chapter 18 of this Title 40:

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

26 (b) the Agricultural Center described in Section
27 40-18-411(a) (2) c.

1 Section 8. The departments of Economic and Community
2 Affairs, Revenue, Commerce, and Finance shall implement this
3 act, exercise all powers as authorized in this act, and
4 promulgate regulations to implement and administer the
5 provisions of this act.

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

13 Section 10. All laws or parts of laws which conflict
14 with this Act are repealed.

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