<u>Section 40-18-370.1</u>

Legislative Findings as to Enhancement of Alabama Jobs Act.

The Legislature finds as follows:

(a) While Alabama's incentive programs have succeeded in growing industry in the more populated parts of the state, Alabama's rural and low growth communities have not enjoyed the same rates of success.

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

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

(d) It is a public purpose to expand Alabama's incentives laws to attract and retain companies in rural and low growth areas in Alabama, and high-tech companies and workers throughout the state. The tools used in Act 2019-392 are urgently needed to solve these problems.

(e) The Legislature finds that the enhancements to the Alabama Jobs Act, as found in Act 2019-392, may be made without compromising on the strict requirement that the state shall not offer any such incentives to the extent that the tax incentives sought exceed the anticipated revenues to the state, as required by Section 40-18-373(1)c.

<u>Section 40-18-371</u>

Requirements for Receipt of Incentives.

For a company to receive one or both of the jobs act incentives provided in this article, all of the following shall occur:

(1) There must be a qualifying project predominantly conducting an activity specified in Section 40-18-372(1);

(2) The qualifying project shall create at least the number of new jobs specified in Section 40-18-372(2);

(3) The company proposing the qualifying project must be an approved company, as provided in Section 40-18-373;

(4) The approved company and the Governor must enter into a project agreement, as provided in Section 40-18-374;

(5) If the incentivized company is allowed a jobs credit, the proof of wages actually paid shall have been delivered and certified, as provided in Section 40-18-375; and

(6) If the incentivized company is allowed an investment credit, the proof of capital actually invested shall have been delivered and certified, as provided in Section 40-18-376.

Section 40-18-372

Qualifying Projects - Activities and Standards.

A qualifying project must be found by the Secretary of Commerce to conduct an activity specified in subdivision (1) and to meet the minimum standard set forth in subdivision (2).

(1) A qualifying project must predominantly conduct an activity that is any one or more of the following:

a. Described by NAICS Code 1133, 115111, 2121, 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482, 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493, 511, 5121 (other than 51213), 51221, 517, 518 (without regard to the premise that data processing and related services be performed in conjunction with a third party), 51913, 52232, 54133 (if predominantly in furtherance of another activity described in this article), 54134 (if predominantly in furtherance of another activity described in this article), 54138, 5415, 541614, 5417, 55 (if not for the production of electricity), 561422 (other than establishments that originate telephone calls), 562213, 56291, 56292, 611512, 927, or 92811.

b. The production of biofuel as such term is defined in Section 2-2-90(c)(2).

c. A renewable energy generation facility that is owned by one or more electric providers, as the term is defined in Section 37-16-3, for providing electric service at retail in Alabama. For purposes of this subdivision, an “electric provider” shall also include an authority as defined in Section 11-50A-1. In the case of an electric provider that is also a tax-exempt organization under the Internal Revenue Code, notwithstanding Section 40-18-376(b)(3), any investment credit may be transferred for the entire term of the project agreement, as approved by the Governor. A “renewable energy generation facility” as used in this subdivision shall include any tangible property that is part of renewable energy generation, including any addition, modification, expansion, or upgrade to transmission or distribution systems that is required to accommodate the interconnection of renewable energy generation.

d. The conduct of original investigations undertaken on a systematic basis to gain new knowledge or the application of research findings or other scientific knowledge to create new or significantly improved products or processes.

e. The national or regional headquarters for a company that conducts significant business operations outside the state and that will serve as the principal office of the company’s principal operating officer with chief responsibility for the daily business operations of the company.

f. A target of the state's economic development efforts pursuant to the Accelerate Alabama Strategic Economic Development Plan adopted in January 2012 by the Alabama Economic Development Alliance, created by Executive Order Number 21 of the Governor on July 18, 2011, or any amended version or successor document thereto.

g. A type listed in a rule adopted by the Department of Commerce, other than an emergency rule.

Notwithstanding the foregoing, a qualifying project may not engage predominantly in farming activities involving trees, animals, or crops, and a qualifying project may not engage predominantly in the retail sale of tangible personal property or services, and may not be a shopping center, restaurant, movie theater, bowling alley, fitness center, miniature golf course, nightclub, gaming facility, or establishment serving the local community. However, if the excluded activities are not the predominant activity at the project, and if the project is otherwise a qualifying project, then the project agreement may provide that the capital investment may include costs related to excluded activities that are ancillary to the primary business conducted as part of the project. This provision shall not be deemed to exclude customer service centers, call centers or headquarters otherwise allowed by this subdivision.

(2) A qualifying project shall create a significant number of new jobs for the area in which the qualifying project shall be located. Absent a finding of extraordinary circumstances by the Secretary of Commerce, a qualifying project shall employ either of the following number of new employees:

a. Any number of new employees, for a qualifying project in which the predominant activity involves chemical manufacturing, data centers, renewable energy generation, engineering, design, or research, metal/machining technology or toolmaking; or

b. At least 50 new employees, for all other qualifying projects.

<u>Section 40-18-373</u>

Approved Companies.

In order for a company to be an approved company, all of the following shall occur:

(1) For any company that proposes a qualifying project, the Secretary of Commerce shall make all of the following findings:

a. That the project is in fact a qualifying project;

b. That the qualifying project will not decrease, directly or indirectly, Alabama's exports; and

c. That the amount of tax incentives sought are exceeded by anticipated revenues for the state, including income, property, business privilege, utility, gross receipts, sales, and use tax revenues that are generated by the economic activity resulting from the project, as they arise from the following aspects of the qualifying project:

1. Construction activities related to the qualifying project;

2. The purchase of building materials and the initial equipping of the qualifying project;

3. The subsequent equipping of the qualifying project; and

4. The operation of the qualifying project.

(2) Upon making affirmative findings on the criteria set forth in subdivision (1) that are applicable, the Secretary of Commerce shall recommend to the Governor that the company be designated as an approved company. The name of the company and information collected about it shall be forwarded to the Governor.

(3) After reviewing the information provided by the Secretary of Commerce, the Governor shall also determine whether the company meets the criteria set forth in subdivision (1). If the Governor makes such a finding, the company shall be an approved company.

<u>Section 40-18-374</u>

Claiming of Incentives; Project Agreement; Amounts and Durations of Incentives.

(a) An incentivized company may claim either or both of the jobs act incentives, to the extent provided in the project agreement.

(b) In order for an incentivized company to claim the jobs act incentives, the Governor and the incentivized company shall execute a project agreement. The agreement shall contain all of the following:

(1) The name of the incentivized company.

(2) The location of the qualifying project.

(3) The activity to be conducted at the qualifying project.

(4) The jobs act incentives to be granted.

(5) The capital investment to be made at the qualifying project.

(6) The time period for the capital investment to be made at the qualifying project.

(7) The number of employees at the qualifying project.

(8) The anticipated wages to be paid to or for the benefit of employees during the incentive period for the jobs created.

(9) The dates or conditions that shall begin the running of the incentive periods for applicable jobs act incentives.

(10) The lengths of the incentive periods for the jobs act incentives.

(11) Any annual or aggregate limitations on the amount of either or both of the jobs act incentives that can be claimed during an incentive period.

(12) Provisions governing the recapture of all or part of the jobs act incentives awarded to the qualifying project, should the approved company default on its obligations in the project agreement.

(13) Whether the project agreement may be assigned by the approved company to some other purchaser, assignee, or successor.

(14) Any other terms, conditions, and limitations that this article or the Governor may require for an incentivized company to qualify for and receive a jobs act incentive.

(15) Any other terms the parties deem necessary or desirable.

(c) The Governor may decrease the amounts and durations of the jobs act incentives to ensure that the anticipated revenues for the state will exceed the amount of tax incentives sought.

Section 40-18-375

Jobs Credit Against Utility Taxes; Realization of Benefits; Rulemaking Authority.

(a)(1) If provided for in the project agreement and in accordance with the terms therein, the incentivized company is allowed a jobs credit against utility taxes, in an annual amount up to 3 percent of the wages paid to eligible Alabama resident employees during the prior year. The incentive period shall be not exceed 10 years.

(2) If the incentivized company is engaged in pharmaceutical, biomedical, medical technology, or medical supplies manufacturing, or its related research and development activities, the incentivized company is allowed a jobs credit against utility taxes, in an annual amount up to four percent of the wages paid to Alabama resident employees during the prior year. The incentive period shall not exceed 10 years. This applies to companies that predominantly conduct an activity described by NAICS code 3254, 339112, or 339113, to include related research and development.

(b) The project agreement shall provide that one of the following methods shall be used to realize the benefits of the jobs credit:

(1)a. As further provided in the project agreement, the jobs credit may be paid to the incentivized company as a refund out of utility taxes during the incentive period, regardless of the amount of utility taxes actually paid by the incentivized company.

b. For each year of the incentive period for the jobs credit, the incentivized company shall submit to the Department of Commerce a certification as to the wages paid to employees during the prior year. Following such examination as it deems necessary, the Department of Commerce may certify the information and deliver the same to the Department of Revenue. Thereafter, the Department of Revenue shall calculate the correct refund and issue it directly to the incentivized company.

(2)a. The jobs credit may be claimed as a credit against utility taxes actually paid until April 20, 2023, after which time the provisions of subdivision (1) shall control, and the offset provided in this subdivision shall cease unless the provisions stated in subdivision (b)(1) are explicitly stated in the project agreement that was executed prior to April 20, 2023. In any one year, if the credit exceeds the amount of taxes that are allowed to be offset by the project agreement and that are owed by the incentivized company, the incentivized company may carry the credit forward, to the extent allowed in the project agreement. No carryforward shall be allowed for more than five years. Rules similar to those used for Section 40-18-15.2 shall be applied.

b. Prior to claiming the jobs credit as provided in this subdivision, the incentivized company shall submit to the Department of Commerce a certification as to the wages paid to employees during the prior year. Following such examination as it deems necessary, the Department of Commerce may certify the information and deliver same to the Department of Revenue. Thereafter, the Department of Revenue shall allow the jobs credit.

(c) The realization methods in subsection (b) shall not create debts of the state within the meaning of Section 213 of the Constitution of Alabama of 2022.

(d) The Department of Finance shall adopt rules to ensure that the credit in no case would reduce the distribution for the Alabama Special Mental Health Trust Fund by using any unencumbered funds.