

1 HB280  
2 147913-1  
3 By Representative Mask  
4 RFD: Economic Development and Tourism  
5 First Read: 14-FEB-13

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8 SYNOPSIS: This bill would expand the definition of the  
9 terms "Industrial Development Property" and "Major  
10 Addition" by providing that they shall be included  
11 as part of establishing or expanding an industrial  
12 or research enterprise shall, by providing that the  
13 costs, if any, of rebuilding, reconstruction,  
14 rehabilitating, repairing, and/or re-equipping any  
15 such property may be added to the capital account  
16 of any person with respect to the property.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

21  
22 To amend Section 40-9B-3, Code of Alabama 1975; as  
23 amended by Acts 2012-54, 2012-210, and 2012-436, 2012 Regular  
24 Session, (Acts 2012); to expand the definition of the terms  
25 "Industrial Development Property" and "Major Addition" by  
26 providing that they shall be included as part of establishing  
27 or expanding an industrial or research enterprise.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 40-9B-3, Code of Alabama 1975, as  
3 amended by Acts 2012-54, 2012-210, and 2012-436, 2012 Regular  
4 Session, (Acts 2012), is amended to read as follows:

5 "§40-9B-3.

6 "(a) For purposes of this chapter, the following  
7 words and phrases mean:

8 "(1) ABATE, ABATEMENT. A reduction or elimination of  
9 a taxpayer's liability for tax or payments required to be made  
10 in lieu thereof. An abatement of transaction taxes imposed  
11 under Chapter 23 of this title, or payments required to be  
12 made in lieu thereof, shall relieve the seller from the  
13 obligation to collect and pay over the transaction tax as if  
14 the sale were to a person exempt, to the extent of the  
15 abatement, from the transaction tax.

16 "(2) ALTERNATIVE ENERGY RESOURCES. The definition  
17 given in Section 40-18-1.

18 "(3) CONSTRUCTION RELATED TRANSACTION TAXES. The  
19 transaction taxes imposed by Chapter 23 of this title, or  
20 payments required to be made in lieu thereof, on tangible  
21 personal property and taxable services incorporated into an  
22 industrial development property, the cost of which may be  
23 added to capital account with respect to the property,  
24 determined without regard to any rule which permits  
25 expenditures properly chargeable to capital account to be  
26 treated as current expenses.

1           "(4) DATA PROCESSING CENTER. An establishment at  
2 which not less than 20 new jobs are located, the average  
3 annual total compensation, including benefits, of such new  
4 jobs to be not less than forty thousand dollars (\$40,000) and  
5 such establishment is engaged in the provision of complete  
6 processing and specialized reports from data, the provision of  
7 automated data processing and data entry services, the  
8 provision of an infrastructure for hosting or data processing  
9 services, the provision of specialized hosting activities, the  
10 provision of application service provisioning, the provision  
11 of general time-share mainframe facilities, or some  
12 combination of the foregoing, without regard to whether any  
13 other activities are conducted at the establishment.

14           "(5) EDUCATION TAXES. Ad valorem taxes, or payments  
15 required to be made in lieu thereof, that must, pursuant to  
16 the Constitution of Alabama of 1901, as amended, legislative  
17 act, or the resolution or other action of the governing board  
18 authorizing the tax, be used for educational purposes or for  
19 capital improvements for education and local construction  
20 related transaction taxes levied for educational purposes or  
21 for capital improvements for education.

22           "(6) HEADQUARTERS FACILITY. Any trade or business  
23 described in the 2007 North American Industry Classification  
24 System, promulgated by the Executive Office of the President  
25 of the United States, Office of Management and Budget,  
26 National Industry 551114, at which not less than 50 new jobs  
27 are located.

1           "(7) HYDROPOWER PRODUCTION. The definition given in  
2 Section 40-18-1.

3           "(8) INDUCEMENT. Refers to an agreement, or an  
4 "inducement agreement," entered into between a private user  
5 and a public authority or county or municipal government  
6 and/or a resolution or other official action, an "inducement  
7 resolution," "inducement letter," or "official action" adopted  
8 by a public authority or county or municipal government, in  
9 each case expressing, among other things, the present intent  
10 of such public authority or county or municipal government to  
11 issue bonds in connection with the private use property  
12 therein described.

13           "(9) INDUSTRIAL DEVELOPMENT PROPERTY. Real and/or  
14 personal property acquired in connection with establishing or  
15 expanding an industrial or research enterprise in Alabama.  
16 Included as part of establishing or expanding an industrial or  
17 research enterprise shall be the costs, if any, of rebuilding,  
18 reconstruction, rehabilitating, repairing, and/or re-equipping  
19 any such property provided the costs, if any, may be added to  
20 the capital account of any person with respect to the  
21 property, determined without regard to any rule which permits  
22 expenditures properly chargeable to capital accounts to be  
23 treated as current expenses.

24           "(10) INDUSTRIAL OR RESEARCH ENTERPRISE.

25           "a. Any trade or business described in the 2007  
26 North American Industry Classification System, promulgated by  
27 the Executive Office of the President of the United States,

1 Office of Management and Budget, Sectors 31 (other than  
2 National Industry 311811), 32, and 33; Subsectors 423, 424,  
3 493 where the trade or business will (i) provide logistics  
4 services related to the distribution of goods, (ii) employ 50  
5 or more persons within the first two years after being placed  
6 in service, and (iii) involve a capital investment of at least  
7 five million dollars (\$5,000,000), except that the investment  
8 in a trade or business located in a favored geographic area,  
9 as that term is defined in Section 40-18-190(a)(6), must  
10 exceed one million dollars (\$1,000,000), 511, and 927;  
11 Industry Groups 2121, 5417, 5415, and 5182 (without regard to  
12 the premise that data processing and related services be  
13 performed in conjunction with a third-party); Industries 11331  
14 and 48691; and National Industries 115111, 517110, 541380, and  
15 561422 (other than establishments that originate telephone  
16 calls) and includes such trades and businesses as may be  
17 hereafter added by an act of the Legislature, reclassified in  
18 any subsequent publication of the North American Industry  
19 Classification System or other industry classification system  
20 developed in conjunction with the United States Department of  
21 Commerce, or any process or treatment facility which recycles,  
22 reclaims, or converts any materials, which include solids,  
23 liquids, or gases, to a reusable product.

24 "b. With respect to abatements granted in accordance  
25 with Section 40-9B-9, and only with respect to such  
26 abatements, "industrial or research enterprise" means any  
27 trade or business described in the 2007 North American

1 Industry Classification System within Subsector 493  
2 (Warehousing and Storage), Industry Number 488310 (Port and  
3 Harbor Operations), or Industry Number 488320 (Marine Cargo  
4 Handling), when such trade or business is conducted on  
5 premises in which the Alabama State Port Authority has an  
6 ownership, leasehold, or other possessory interest and such  
7 premises are used as part of the operations of the Alabama  
8 State Port Authority.

9 "c. "Industrial or research enterprise" includes the  
10 above-described trades and business and any others as may  
11 hereafter be reclassified in any subsequent publication of the  
12 NAICS or similar industry classification system developed in  
13 conjunction with the United States Department of Commerce or  
14 Office of Management and Budget.

15 "d. "Industrial or research enterprise" also  
16 includes any underground natural gas storage facility which is  
17 located in the Gulf Opportunity Zone, as that phrase is  
18 defined in the Gulf Opportunity Zone Act of 2005, developed  
19 from existing geologic reservoirs, including, without  
20 limitation, salt domes, and placed in service on or before  
21 December 31, 2013.

22 "e. "Industrial or research enterprise" also  
23 includes any plant, property, or facility that meets both of  
24 the following:

25 "1. It produces electricity from:

1           "(i) Alternative energy resources and has capital  
2 costs of at least one hundred million dollars (\$100,000,000);  
3 or

4           "(ii) Hydropower production and has capital costs of  
5 at least five million dollars (\$5,000,000).

6           "2. All or a portion of the plant, property, or  
7 facility is owned by one or more of the following: A utility  
8 described in Section 37-4-1(7)a., an entity organized under  
9 the provisions of Chapter 6 of Title 37, or an authority both  
10 organized and existing pursuant to the provisions of Chapter  
11 50A of Title 11 and subject to the payments required to be  
12 made in lieu of ad valorem, sales, use, license, and severance  
13 taxes imposed by Section 11-50A-7, or an entity in which one  
14 or more of the foregoing owns an interest.

15           "f. "Industrial or research enterprise" also  
16 includes any headquarters facility.

17           "g. "Industrial or research enterprise" also  
18 includes any data processing center.

19           "h. "Industrial or research enterprise" also  
20 includes any research and development facility.

21           "i. "Industrial or research enterprise" also  
22 includes any renewable energy facility.

23           "j. "Industrial or research enterprise" also  
24 includes any tourism destination attraction.

25           "(11) MAJOR ADDITION. Any addition to an existing  
26 industrial development property that equals the lesser of: 30  
27 percent of the original cost of the industrial development



1 property or two million dollars (\$2,000,000). For purposes of  
2 this subsection, the original cost of existing industrial  
3 development property shall be the amount of industrial  
4 development property with respect to which an abatement was  
5 granted under this chapter when the property was constructed,  
6 or if the existing industrial development property was  
7 constructed before January 1, 1993, the maximum amount that  
8 would have been allowed if the provisions of this chapter had  
9 applied at the time it was constructed. Only property that  
10 constitutes industrial development property shall be taken  
11 into account in making the determination in the previous  
12 sentence. Major addition shall include any addition costing at  
13 least two million dollars (\$2,000,000) which constitutes an  
14 industrial or research enterprise, regardless of whether added  
15 to an existing industrial development property. Included as  
16 part of establishing or expanding an industrial or research  
17 enterprise shall be the costs, if any, of rebuilding,  
18 reconstruction, rehabilitating, repairing, and/or re-equipping  
19 any such property provided the costs, if any, may be added to  
20 the capital account of any person with respect to the  
21 property, determined without regard to any rule which permits  
22 expenditures properly chargeable to capital accounts to be  
23 treated as current expenses.

24 "(12) MAXIMUM EXEMPTION PERIOD. Except as provided  
25 in Section 40-9B-11, either

26 "a. A period equal to the shorter of:

1           "1. Ten years from and after: (i) The date of  
2           initial issuance by a county, city, or public authority of  
3           bonds to finance any costs of a private use property, or (ii)  
4           If no such bonds are ever issued, the later of: A. The date on  
5           which title to the property was acquired by or vested in the  
6           county, city, or public authority, or B. The date on which the  
7           property is or becomes owned, for federal income tax purposes,  
8           by a private user; or

9           "2. The weighted average economic life of the assets  
10          comprising such property, determined consistently with the  
11          provisions of 26 U.S.C. § 147(b) and measured from the date  
12          such property is placed in service; or

13          "b. Exclusively with respect to a private user of a  
14          data processing center, (i) a period of 10 years from and  
15          after the date on which private use property is or becomes  
16          owned, for federal income tax purposes, by such private user,  
17          if the aggregate capital investment in the data processing  
18          center by the private user does not exceed \$200,000,000 within  
19          10 years from the date on which the private user commences the  
20          acquisition, construction, and equipping of the data  
21          processing center, (ii) a period of 20 years from and after  
22          the date on which private use property is or becomes owned,  
23          for federal income tax purposes, by such private user, if the  
24          aggregate capital investment in the data processing center by  
25          the private user exceeds \$200,000,000 but is not greater than  
26          \$400,000,000 within 10 years from the date on which the  
27          private user commences the acquisition, construction, and

1 equipping of the data processing center, or (iii) a period of  
2 30 years from and after the date on which private use property  
3 is or becomes owned, for federal income tax purposes, by such  
4 private user, if the aggregate capital investment in the data  
5 processing center by the private user exceeds \$200,000,000  
6 within 10 years from the date on which the private user  
7 commences the physical work of constructing and equipping the  
8 data processing center and exceeds \$400,000,000 within 20  
9 years from the date on which the private user commences the  
10 acquisition, construction, and equipping of the data  
11 processing center. For purposes of this paragraph b., a  
12 private user's aggregate capital investment in a data  
13 processing center shall include all real and personal property  
14 comprising a data processing center, the costs of which may be  
15 capitalized for federal income tax purposes. In no event shall  
16 abatements of construction related transaction taxes or  
17 noneducational ad valorem taxes granted for a data processing  
18 center apply beyond the expiration of the applicable maximum  
19 exemption period.

20 "(13) MORTGAGE AND RECORDING TAXES. The taxes  
21 imposed by Chapter 22 of this title.

22 "(14) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem  
23 taxes, or payments required to be made in lieu thereof,  
24 imposed by the state, counties, municipalities, and other  
25 taxing jurisdictions of Alabama that are not required to be  
26 used for educational purposes or for capital improvements for  
27 education.

1           "(15) PERSON. Includes any individual, partnership,  
2 trust, estate, or corporation.

3           "(16) PRIVATE USER. Any individual, partnership, or  
4 corporation organized for profit that is or will be treated as  
5 the owner of private use property for federal income tax  
6 purposes, any entity organized under Chapter 6 of Title 37,  
7 and any authority both organized and existing pursuant to  
8 Chapter 50A of Title 11 and subject to the payments required  
9 to be made in lieu of ad valorem, sales, use, license, and  
10 severance taxes imposed by Section 11-50A-7.

11           "(17) PRIVATE USE INDUSTRIAL PROPERTY. Private use  
12 property that also constitutes industrial development  
13 property.

14           "(18) PRIVATE USE PROPERTY. Any real and/or personal  
15 property which is or will be treated as owned by a private  
16 user for federal income tax purposes even though title may be  
17 held by a public authority or municipal or county government;  
18 any real and/or personal property which is owned by any entity  
19 organized under Chapter 6 of Title 37; and any real and/or  
20 personal property which is owned by any authority both  
21 organized and existing pursuant to Chapter 50A of Title 11,  
22 and subject to the payments required to be made in lieu of ad  
23 valorem, sales, use, license, and severance taxes imposed by  
24 Section 11-50A-7.

25           "(19) PUBLIC AUTHORITY. A corporation created for  
26 public purposes pursuant to a provision of the Constitution of  
27 Alabama of 1901, or a general or local law that authorized it

1 to issue bonds, the interest on which is exempt from the  
2 Alabama income tax, as in effect on May 21, 1992.

3 "(20) PUBLIC INDUSTRIAL AUTHORITY. A public  
4 authority authorized to issue bonds to acquire, construct,  
5 equip, or finance industrial development property.

6 "(21) RENEWABLE ENERGY FACILITY. Any plant,  
7 property, or facility that either:

8 "a. Produces electricity or natural gas, in whole or  
9 in part, from biofuels as such term is defined in Section  
10 2-2-90(c) (2) or from renewable energy resources as such term  
11 is defined in Section 40-18-1(30) with the exception that  
12 hydropower production shall be excluded from such definition;  
13 or

14 "b. Produces biofuel as such term is defined in  
15 Section 2-2-90(c) (2).

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

22 "(23) STATEMENT OF INTENT. A written statement of  
23 intent to claim an abatement provided in this chapter, or to  
24 petition for local tax abatement, relating to an industrial or  
25 research enterprise described in paragraph e. of subdivision  
26 (10) of this subsection that is filed with the Department of  
27 Revenue at any time prior to the date on which the industrial

1 or research enterprise described in paragraph e. of  
2 subdivision (10) of this subsection is placed in service in  
3 accordance with such procedures and on such form or forms as  
4 may be prescribed by the Department of Revenue. Such statement  
5 of intent shall contain a description of the industrial or  
6 research enterprise described in paragraph e. of subdivision  
7 (10) of this subsection; the date on which the acquisition,  
8 construction, installation, or equipping of the industrial or  
9 research enterprise described in paragraph e. of subdivision  
10 (10) of this subsection was commenced or is expected to  
11 commence; the actual or, if not known, the estimated capital  
12 costs of the industrial or research enterprise described in  
13 paragraph e. of subdivision (10) of this subsection; the  
14 number of new employees to be employed at the industrial or  
15 research enterprise described in paragraph e. of subdivision  
16 (10) of this subsection; and any other information required by  
17 the Department of Revenue.

18 "(24) TOURISM DESTINATION ATTRACTION. A commercial  
19 enterprise which is open to the public not less than 120 days  
20 during a calendar year and is designed to attract visitors  
21 from inside or outside of the State of Alabama, typically for  
22 its inherent cultural value, historical significance, natural  
23 or man-made beauty, or entertainment or amusement  
24 opportunities. The term shall include, but not be limited to,  
25 a cultural or historical site; a botanical garden; a museum; a  
26 wildlife park or aquarium open to the public that cares for  
27 and displays a collection of animals or fish; an amusement

1 park; a convention hotel and conference center; a water park;  
2 or a spectator venue or arena.

3 "A tourism destination attraction shall not include  
4 a facility primarily devoted to the retail sale of goods; a  
5 shopping center; a restaurant; a movie theater; a bowling  
6 alley; a fitness center; a miniature golf course; or a  
7 nightclub. Provided, however, that the capital costs of the  
8 construction of a tourism destination attraction may include  
9 the capital costs associated with the construction of any  
10 retail establishment, restaurant or other portion of the  
11 tourism destination attraction. The term also does not include  
12 any gaming facility or establishment that the Secretary of the  
13 Department of Commerce deems to be serving the local  
14 community.

15 "(b) The abatements of ad valorem taxes, and  
16 payments in lieu thereof, allowed by amendments to this  
17 section by Act 2008-275 shall become effective for projects  
18 for which statements of intent are filed after December 31,  
19 2011. No ad valorem taxes, or payments in lieu thereof, shall  
20 be abated for periods prior to January 1, 2012. The other  
21 abatements allowed by amendments made to this section by Act  
22 2008-275 shall become effective after December 31, 2011.

23 "For a qualifying industrial or research enterprise  
24 described in Section 40-9B-3(a)(10)j., the approval of the  
25 abatement of a specified ad valorem tax or construction  
26 related tax levied or imposed by a county or municipality, or  
27 payments required to be made in lieu thereof, shall take

1 effect only upon adoption of a resolution by the governing  
2 body of that county or municipality approving such abatement  
3 or abatements."

4 Section 2. This act shall become effective on the  
5 first day of the third month following its passage and  
6 approval by the Governor, or its otherwise becoming law.