

1 HB424
2 198791-1
3 By Representatives Lovvorn, Scott, Crawford, Carns and Whitt
4 RFD: Ways and Means Education
5 First Read: 11-APR-19

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8 SYNOPSIS: Under existing law, there are no economic
9 incentives or tax credits extended to Alabama
10 businesses for qualified research expenses incurred
11 by Alabama companies that spend funds and resources
12 in-house or pay Alabama research companies to
13 conduct qualified research for new or improved
14 products or services.

15 This bill would establish the Alabama
16 Innovation Act that would provide for a research
17 and development tax credit to certain Alabama
18 companies modeled after the federal research and
19 development tax credit. The credit would be based
20 on in-house research and contract research expenses
21 conducted in Alabama and consortium research
22 expenses for qualified research conducted in
23 Alabama. The credit could be taken against the
24 income tax or the financial institution excise tax.

25 This bill would limit the Alabama Innovation
26 tax credits to no more than \$25 million of credits
27 in any one calendar year; and no eligible company

1 or business could claim more than \$2,000,000 in a
2 single tax year. The credits would be claimed on a
3 first-come, first-served basis.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

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9 To enact the Alabama Innovation Act; to allow a
10 research and development tax credit for qualified research
11 expenses in Alabama in the amount of 25 percent of new
12 research at an Alabama research entity, and 10 percent of
13 other research in Alabama; to provide that no more than \$25
14 million of tax credits would be allowed in any one calendar
15 year, and no one taxpayer would be allowed more than
16 \$2,000,000 in a single tax year; to allow the credits to
17 offset the taxes in Chapters 16 and 18 of Title 40, Code of
18 Alabama 1975, and estimated payments thereof; to provide that
19 the income tax credits shall not affect estimated income tax
20 payments before January 1, 2020; to provide that earned but
21 unused credits could be carried forward for five years; to
22 create an allocation system; to provide for the promulgation
23 of forms for information to be submitted to the Department of
24 Revenue, and that such submissions shall be treated as tax
25 returns; to provide that no taxpayer shall have any right to
26 credits that are granted absent strict compliance with this
27 act; to require that the tax credit only apply to research

1 falling within certain industries; to provide for the
2 promulgation of rules; to provide for the coordination between
3 the availability of the federal research credit and the credit
4 herein; and to provide for an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. This act shall be known as the Alabama
7 Innovation Act of 2019.

8 Section 2. A new Article 22 of Chapter 18 of Title
9 40, Code of Alabama 1975, is created to read as follows:

10 § 40-18-470.

11 For the purpose of this article, the following words
12 and phrases shall have the following meanings:

13 (a) ALABAMA RESEARCH ENTITY. One or more of the
14 following:

15 (1) A public or private university in the state;

16 (2) A university research foundation affiliated with
17 a public or private university in the state;

18 (3) A public two-year college in the state;

19 (4) A publicly-owned hospital in the state;

20 (5) An entity duly formed, domiciled or qualified to
21 do business in the state that meets each of the following
22 criteria:

23 a. Is exempt from federal income tax under 26 U.S.C.
24 § 501(c)(3),

25 b. Is predominantly engaged in research and
26 non-commercial development activities undertaken for the
27 purpose of discovering information that is technological or

1 biotechnological in nature, involves a process of
2 experimentation, and the application of which is intended to
3 be used in the development of a new or improved product,
4 service or treatment;

5 c. Has its principal place of business in the state;
6 and

7 d. Has, or is anticipated to have, at least 75
8 percent of its property and payroll in Alabama, using the
9 property and payroll factor calculations found in Title 40,
10 Chapters 16 or 18, as appropriate.

11 (b) APPROVED ACTIVITY. The conduct of an activity
12 that is predominantly any one or more of the following:

13 (1) Described by NAICS Code 1133, 115111, 2121,
14 22111, 221330, 31 (other than 311811), 32, 33, 482, 4862,
15 48691, 48699, 48819, 4882, 4883 (other than 48833), 511, 5121
16 (other than 51213), 51221, 517, 518 (without regard to the
17 premise that data processing and related services be performed
18 in conjunction with a third party), 51913, 52232, 54133 (if
19 predominantly in furtherance of another activity described in
20 this article), 54138, 5415, 5417, 55 (if not for the
21 production of electricity).

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

24 (3) A target of the state's economic development
25 efforts pursuant to either of the following:

26 a. The Accelerate Alabama Strategic Economic
27 Development Plan adopted in January 2012 by the Alabama

1 Economic Development Alliance, created by Executive Order
2 Number 21 of the Governor on July 18, 2011, or any amended
3 version or successor document thereto or

4 b. A type listed in a rule issued by the Department
5 of Commerce pursuant to the Alabama Administrative Procedure
6 Act. Notwithstanding the foregoing, an approved activity
7 shall not include a headquarters facility otherwise allowed as
8 an approved activity.

9 (c) CONSORTIUM RESEARCH EXPENSES. Any amount paid or
10 incurred by the taxpayer to any Alabama research entity for
11 qualified research, but not including any expenses for
12 research activities performed outside Alabama.

13 (d) CONTRACT RESEARCH EXPENSES. Any amount paid or
14 incurred by the taxpayer to any person (other than an employee
15 of the taxpayer) for qualified research, but not including any
16 of the following:

17 (1) Consortium research expenses; or

18 (2) Expenses for research activities performed
19 outside Alabama.

20 (e) DEPARTMENT. The Alabama Department of Commerce.

21 (f) IN-HOUSE RESEARCH EXPENSES. The meaning given in
22 26 U.S.C. § 41(b)(2), but not including wages paid or incurred
23 to employees residing outside Alabama.

24 (g) NAICS CODE. Any sector, subsector, industry
25 group, industry or national industry of the 2017 North
26 American Industry Classification System, or any similar
27 classification system developed in conjunction with the United

1 States Department of Commerce or Office of Management and
2 Budget.

3 (h) QUALIFIED RESEARCH. The meaning given in 26
4 U.S.C. § 41(d), if conducted in Alabama in pursuit of an
5 approved activity. In applying any terms in 26 U.S.C. § 41,
6 "qualified research" shall have the meaning given herein.

7 § 40-18-471.

8 (a) An innovation tax credit is allowed for
9 qualified research conducted in Alabama. The tax credit shall
10 be in an amount equal to the sum of the following amounts:

11 (1) 10 percent of the following:

12 a. In-house research expenses and contract research
13 expenses for qualified research conducted in Alabama during
14 the taxable year, minus

15 b. Fifty percent of the in-house research expenses
16 and contract research expenses conducted in Alabama, on
17 average, over the 3 taxable years preceding the taxable year
18 for which the credit is being determined.

19 (2) 25 percent of the following:

20 a. Consortium research expenses for qualified
21 research conducted in Alabama during the taxable year, minus

22 b. Fifty percent of the consortium research expenses
23 conducted in Alabama, on average, over the 3 taxable years
24 preceding the taxable year for which the credit is being
25 determined.

26 (b) The innovation tax credit may offset the taxes
27 levied by Chapters 16 and 18, or an estimated payment of the

1 tax due under Chapter 16 or 18, but not below zero. In no
2 event shall the credits provided for by this article be
3 allowed to reduce any estimated payment of the taxes levied by
4 Chapters 16 and 18 due for tax period ending before January 1,
5 2020.

6 (c) All other state income tax and financial
7 institution excise tax credits shall be applied prior to the
8 application of the tax credit provided in this section.

9 § 40-18-472.

10 (a) If in any one tax year the approved innovation
11 tax credit exceeds the amount of the taxpayer's applicable tax
12 liability, the taxpayer may carry forward the unused tax
13 credit. However, no carryforward shall be allowed for more
14 than five tax years. Rules similar to those used for Section
15 40-18-15.2 shall be applied.

16 (b) A taxpayer may assign and convey the innovation
17 tax credit to another entity if all of the assets of the
18 taxpayer are assigned and conveyed in the same transaction.
19 Proof of such transfer shall be submitted to the department.

20 (c) To the extent the innovation tax credit is used
21 to offset financial institution excise tax liability, in
22 making the report required by Section 40-16-6(d), the
23 financial institution receiving the credit shall not take into
24 account the activity for which the tax credit is given. The
25 tax credit shall be applied only to the state portion of the
26 tax liability and shall not offset or reduce the financial

1 institution excise tax distribution made to municipalities and
2 counties pursuant to Section 40-16-6.

3 (d) To the extent the innovation tax credit is
4 utilized by the taxpayer or by a permitted transferee, no
5 deduction for the related expenses shall be allowed.

6 § 40-18-473.

7 The maximum amount of innovation tax credits all
8 taxpayers shall be allowed under Section 40-18-471 in any one
9 calendar year shall be limited to \$25 million, and no taxpayer
10 shall receive an innovation tax credit of more than \$2,000,000
11 in a single tax year. The tax credits shall be allocated among
12 various taxpayers using the procedures described in this
13 section.

14 (a) Each taxpayer who wishes to claim an innovation
15 tax credit shall file an application with the department
16 showing the amount of the tax credit which the taxpayer
17 expects in good faith to claim during the tax year. No
18 application and no claim shall exceed \$2,000,000. The
19 applications shall be submitted electronically to the
20 department between March 15 and December 31, and such
21 applications shall apply to the tax year that begins during
22 that same calendar year.

23 (b) As applications are submitted, the department
24 shall approve any the department deems sufficient under this
25 article, until the total approved applications represent \$25
26 million of anticipated innovation tax credits. All
27 applications received during the application period up to the

1 \$25 million limit is reached shall receive approval for the
2 full amount applied for. If the total amount of all of the
3 applications shall exceed \$25 million, each applicant shall
4 receive a pro rata share of the credits available at the start
5 of that day. To the extent that the applications are not
6 approved by December 31, the portion not approved shall be
7 deemed conditionally denied by the department. Taxpayers may
8 continue to submit applications after the \$25 million cap is
9 reached, and applications that the department deems otherwise
10 sufficient shall be deemed conditionally denied but maintained
11 in the order received.

12 (c) Following the completion of the qualifying
13 research expenditures, the taxpayer shall submit records to
14 the department sufficient to document qualification for the
15 credit. After reviewing taxpayer records and finding them
16 satisfactory to document qualification for the credit, the
17 department shall issue a certificate to the taxpayer for the
18 amount of credit not to exceed the amount originally applied
19 for. The department shall deliver the same to the Department
20 of Revenue.

21 (d) If a tax return submitted for the corresponding
22 tax year indicates that the full amount of the innovation tax
23 credit with respect to an approved taxpayer was not claimed
24 for use in the current or a carryforward tax year, the
25 department shall approve, in the order they were received, the
26 applications that were sufficient but initially deemed
27 conditionally denied until the approved applications represent

1 in the aggregate \$25 million of approved innovation tax
2 credits. The department shall timely notify all taxpayers who
3 filed such applications.

4 (e) The calculations required to be made by the
5 Department of Revenue shall be based on the initial tax
6 returns filed by taxpayers who had innovation tax credits
7 approved. No taxpayer may amend a tax return to claim an
8 innovation tax credit, or a larger amount of an innovation tax
9 credit, that was not claimed on its tax return filed initially
10 with the Department of Revenue, unless the amendment is to
11 claim a credit that was deemed conditionally denied but later
12 approved by the department, in the amount so approved.

13 § 40-18-474.

14 For any taxpayer that enters into an economic
15 development project agreement with the state, the following
16 shall apply:

17 (a) For any innovation tax credits which have not
18 yet been allocated for the current year, the project agreement
19 may provide for an allocation of innovation tax credits to the
20 taxpayer, to the extent otherwise in compliance with this
21 article. No such allocation of innovation tax credits shall be
22 subject to the proration provided for in Section 40-18-473(b).

23 § 40-18-475.

24 (a) All filings made by a private party with either
25 the Department of Revenue or Department of Commerce shall be
26 made according to the rules and using forms promulgated by
27 such department. Any such filing shall be treated as a tax

1 return, subject to taxpayer privacy restrictions as well as
2 any penalties that may be imposed by the Department of
3 Revenue.

4 (b) Nothing in this article shall be construed to
5 make available to any taxpayer any right to the benefits
6 conferred by this article absent strict compliance with this
7 article.

8 (c) The Departments of Commerce and Revenue are
9 authorized to issue rules under the Alabama Administrative
10 Procedure Act as necessary to implement and administer the
11 provisions of this article. This article shall be construed
12 generally to conform to 26 U.S.C. § 41, except for percentage
13 reductions specified therein. In the event that 26 U.S.C. § 41
14 should be repealed or suspended by Congress in any year, the
15 credit provided in this article shall refer to and be based on
16 the version of 26 U.S.C. § 41 as it existed on the last day
17 prior to the effective date of such repeal or suspension.

18 §40-18-476.

19 Reporting requirements.

20 (a) (1) Effective January 1, 2021, taxpayers
21 receiving tax credits pursuant to this act shall file an
22 annual informational report in a manner as prescribed by the
23 Department of Revenue. All information submitted to the
24 department by taxpayers claiming or seeking certification of a
25 credit shall be subject to the confidentiality provisions of
26 Section 40-2A-10.

1 (2) The information on the reports required by this
2 section shall be consistent with the information required by
3 the Legislature pursuant to Section 40-1-50, and rules adopted
4 thereunder. Aggregated information provided pursuant to this
5 section is exempt from the confidentiality provisions of
6 Section 40-2A-10 and shall be provided by the department to
7 the Legislature in accordance with Section 40-1-50 and rules
8 adopted by the Department of Revenue.

9 Section 3. If a court of competent jurisdiction
10 adjudges invalid or unconstitutional any clause, sentence,
11 paragraph, section, or part of this act, such judgment or
12 decree shall not affect, impair, invalidate, or nullify the
13 remainder of this act, but the effect of the decision shall be
14 confined to the clause, sentence, paragraph, section, or part
15 of this act adjudged to be invalid or unconstitutional.

16 Section 4. All laws or parts of laws which conflict
17 with this act are repealed.

18 Section 5. Unless extended by an act of the
19 legislature, both houses concurring, this act shall sunset on
20 December 31, 2024.

21 Section 6. Subject to Section 5 hereof, this act
22 shall become effective for tax years beginning on or after
23 January 1, 2020, following its passage and approval by the
24 Governor, or its otherwise becoming law.