

HB441 ENROLLED



1 HB441
2 SQG2585-2
3 By Representative Garrett
4 RFD: Ways and Means Education
5 First Read: 11-Apr-24



HB441 Enrolled

1 Enrolled, An Act,

2 Relating to the Growing Alabama Act, the Innovating
3 Alabama Act, the Alabama Jobs Act, and Innovate Alabama; to
4 amend Sections 40-18-376.4, 40-18-417.2, 41-10-801, 41-10-804,
5 and 41-10-842, Code of Alabama 1975; to provide for eligible
6 census tracts under the federal New Markets Tax Credit
7 program.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 40-18-376.4, 40-18-417.2,
10 41-10-801, 41-10-804, and 41-10-842, Code of Alabama 1975, are
11 amended to read as follows:

12 "§40-18-376.4

13 (a) This section shall be applicable to an
14 underrepresented company, as defined in this section. In
15 making the findings required by Section 40-18-373(1), an
16 underrepresented company that proposes a qualifying project
17 shall be an approved company for purposes of this section only
18 if the Secretary of Commerce makes the additional finding that
19 the qualifying project will increase economic diversity and
20 will benefit the state.

21 (b) If provided for in the project agreement, the
22 following shall be allowed to any company which meets all of
23 the criteria in subsection (a):

24 (1) Absent a finding of extraordinary circumstances by
25 the Secretary of Commerce, a qualifying project shall be
26 deemed to be in existence notwithstanding the requirements of
27 Section 40-18-372 so long as 10 new jobs are created.

28 (2) A jobs credit against utility taxes, in an annual



HB441 Enrolled

29 amount up to 4 percent of the wages paid to Alabama resident
30 employees during the prior year.

31 (3) The investment credit provided in Section
32 40-18-376(a) shall have an incentive period not to exceed 15
33 years.

34 (c) An "underrepresented company" is any company that
35 meets all the criteria in subdivision (1) or (2):

36 (1) The company is a for-profit business headquartered
37 in a community eligible for investment through the federal New
38 Markets Tax Credit program under 26 U.S.C. § 45D(e) as those
39 communities were identified as of January 1, 2015, or in such
40 a community identified thereafter, has fewer than 10 employees
41 at the time the project agreement is executed, and has average
42 gross revenues of less than five hundred thousand dollars
43 (\$500,000) in the company's three years prior to the execution
44 of the project agreement; or

45 (2) The company is a for-profit business that is
46 independently owned and controlled and is at least 51 percent
47 owned and controlled by one or more underrepresented persons
48 or, in the case of a publicly-owned business, the company is a
49 for-profit business of which at least 51 percent of the stock
50 is owned and controlled by one or more underrepresented
51 persons and whose daily management and operations are under
52 the control of one or more underrepresented persons. As used
53 herein, an underrepresented person is a United States citizen
54 who is a woman or is African American."

55 "§40-18-417.2

56 (a) (1) A local economic development organization that



HB441 Enrolled

57 owns a site may apply to the Department of Commerce for
58 funding to solve an inadequacy involving the site. The
59 application by the local economic development organization
60 shall include at least one of the following:

61 a. If there is a pending expression of interest about
62 the site from an industry or business, a list of the site
63 preparation or public infrastructure work needed to make the
64 site acceptable to the industry or business.

65 b. If the site has been offered to one or more
66 industries or businesses but the offer did not result in the
67 industry or business locating on the site, a list of the site
68 preparation or public infrastructure work that, if it had been
69 completed, would have made the site acceptable to the
70 industries or businesses.

71 c. If the site is an industrial or research park that
72 needs connections to interstates, highways, roadways, rail
73 systems, or sewer, fiber, electrical, gas, or water
74 infrastructure, a list of the site preparation or public
75 infrastructure work needed.

76 d. Capital improvements or economic development
77 activities at an inland port or intermodal facility, as
78 described in Section 40-18-417.1; provided that the
79 application is accompanied by an economic impact report on
80 such improvements or activities.

81 e. Any site improvement or public infrastructure work
82 in census tracts that meets the definition of low-income
83 communities pursuant to 26 U.S.C. § 45D(e) as those
84 communities were identified as of January 1, 2015, or in such



HB441 Enrolled

85 a community identified thereafter.

86 (2) An economic development organization may apply to
87 the Department of Commerce for funding to undertake the
88 construction, maintenance, promotion, operation, management,
89 leasing, and subleasing of an agricultural center that
90 includes a multi-use facility and related commercial and
91 noncommercial structures for livestock, equestrian, small
92 animal shows and events, spectator events, trade shows,
93 educational conferences, agricultural and agricultural related
94 industries, educational, demonstrational or training purposes,
95 educational and training conferences or events, recreational
96 vehicle rallies, recreational vehicle multi-day parking,
97 hosting of corporate and non-corporate organization meetings,
98 use as fair grounds, operation of retail activities, and other
99 events and facilities expected to draw participants and
100 spectators from states located across the southeastern United
101 States, with a projected total annual economic impact upon
102 completion of all phases of the agricultural center of at
103 least thirty-five million dollars (\$35,000,000) and with the
104 related and supporting infrastructure and facilities having a
105 projected capital expenditure upon completion of all phases of
106 the agricultural center of at least one hundred million
107 dollars (\$100,000,000); provided that the application is
108 accompanied by an economic impact report on the agricultural
109 center.

110 (b) The application shall include quotes for the
111 completion of the work, following compliance with the
112 procedures set forth by the Department of Economic and



HB441 Enrolled

113 Community Affairs, as if the organization were disbursing
114 state funds received from the department.

115 (c) The application provided in paragraph (a)(1) a. or
116 b. shall include an estimate of the number of jobs, wages, and
117 capital investment which would have been undertaken by the
118 industries or businesses referred to in paragraph (a)(1) a. or
119 b.

120 (d) The application provided in subsection (a) shall
121 include proof that the economic development organization has
122 in full force and effect a conflict of interest policy
123 consistent with that found in the instructions to Form 1023
124 issued by the Internal Revenue Service.

125 (e) The application provided in subsection (a) shall
126 include a notarized affirmation by an officer of the economic
127 development organization that the submission of the
128 application did not violate the conflict of interest policy
129 referred to in subsection (d)."

130 "§41-10-801

131 For the purposes of this article, the following terms
132 ~~shall~~ have the following meanings:

133 (1) ASPIRING ALABAMIAN. A person who has less than one
134 hundred thousand dollars (\$100,000) of household net worth and
135 who satisfies at least one of the following criteria:

136 a. The person has a principal residence in a community
137 eligible for investment through the federal New Markets Tax
138 Credit program under 26 U.S.C. § 45D(e)(1) as those
139 communities were identified as of January 1, 2015, or in such
140 a community identified thereafter.



HB441 Enrolled

141 b. The person owns at least a majority interest in a
142 business located in a community eligible for investment
143 through the federal New Markets Tax Credit program under 26
144 U.S.C. § 45D(e)(1) as those communities were identified as of
145 January 1, 2015, or in such a community identified thereafter.

146 c. The person does not hold, and is not actively
147 pursuing, a baccalaureate degree or does not have a parent or
148 legal guardian who holds a baccalaureate degree.

149 d. The person has at least one parent who does not have
150 a high school diploma or its equivalent.

151 (2) BOARD. The governing board of the corporation.

152 (3) CORPORATION. The Alabama Innovation Corporation
153 created by this article as an authority organized as a public
154 corporation having a legal existence separate and apart from
155 the state and any county, municipality, or political
156 subdivision.

157 (4) ECONOMIC DEVELOPMENT AND INNOVATION ENTITY.

158 a. A nonprofit corporation that possesses all of the
159 following characteristics:

160 1. Is organized as a nonprofit corporation exempt from
161 federal income tax under Section 501(c) of the Internal
162 Revenue Code of 1986, as amended.

163 2. Has a record of, or can demonstrate that it is
164 capable of, serving the entire state on matters involving
165 economic development.

166 3. Has a record of, or can demonstrate that it is
167 capable of, managing startup competitions or related
168 programming designed to foster an innovation-based economy.



HB441 Enrolled

169 4. Has received, or is eligible to receive, grant
170 funding from the state or from federal or private sources.

171 b. In determining whether a nonprofit corporation
172 qualifies as an economic development and innovation entity,
173 the board may attribute to the nonprofit corporation the
174 experiences of its officers, staff, and directors with other
175 nonprofit corporations.

176 (5) ELIGIBLE INVESTMENTS. All of the following:

177 a. Demand deposits (interest bearing) in federally
178 insured banks, and interest bearing deposits, whether or not
179 evidenced by certificates of deposits, in federally insured
180 banks; provided, however, that the deposits plus interest
181 shall be fully secured by obligations described in paragraphs
182 b. and c., to the extent that the deposits plus interest
183 exceed insurance available from the Federal Deposit Insurance
184 Corporation, or from any agency of the United States of
185 America that may succeed to the functions of the Federal
186 Deposit Insurance Corporation.

187 b. Bonds, notes, and other evidences of indebtedness
188 that are direct obligations of the United States of America or
189 that are unconditionally guaranteed as to both principal and
190 interest by the United States of America.

191 c. Bonds, debentures, notes, or other evidences of
192 indebtedness issued or guaranteed by any federal agencies or
193 government sponsored enterprises authorized to issue their own
194 debt instruments including, without limitation, to any of the
195 following: Federal Farm Credit Bank, Federal Intermediate
196 Credit Banks, the Export-Import Bank of the United States,



HB441 Enrolled

197 Federal Land Banks, the Federal National Mortgage Association,
198 the Governmental National Mortgage Association, the Federal
199 Financing Bank, Federal Banks for Cooperatives, Federal Home
200 Loan Banks, Federal Home and Loan Mortgage Association, or the
201 Farmers Home Administration.

202 d. Repurchase agreements with federally insured banks
203 or with government bond dealers reporting to and trading with
204 the Federal Reserve Bank of New York, provided that the
205 repurchase agreements are secured by obligations described in
206 paragraphs b. and c.

207 e. Interest-bearing time deposits, whether or not
208 evidenced by certificates of deposit, in savings and loan
209 associations: (i) the deposits of which are insured to the
210 maximum extent possible by the Federal Savings and Loan
211 Insurance Corporation or any agency of the United States of
212 America that may succeed to its functions; and (ii) the
213 principal office of which is located in the state. The
214 deposits plus interest shall be secured by obligations
215 described in paragraphs b. and c., to the extent that the
216 deposits plus interest exceed insurance available from the
217 Federal Savings and Loan Insurance Corporation or from any
218 agency of the United States of America that may succeed to the
219 functions of the Federal Savings and Loan Insurance
220 Corporation.

221 f. Other legal investments which the corporation
222 determines will have the effect of growing an innovative
223 economy.

224 (6) FUND. The Alabama Innovation Fund.



HB441 Enrolled

225 (7) SMALL BUSINESS INNOVATION RESEARCH. The grants and
226 programs defined in 15 U.S.C. § 638(e)(4).

227 (8) SMALL BUSINESS TECHNOLOGY TRANSFER RESEARCH. The
228 grants and programs defined in 15 U.S.C. § 638(e)(6).

229 (9) STEM. Science, technology, engineering, and
230 mathematics."

231 "§41-10-804

232 (a) The board shall have all of the powers necessary to
233 carry out and effectuate the purposes of this article. The
234 foregoing sentence shall be construed broadly, so that the
235 failure to state a power of the board shall not be considered
236 a limitation upon the board, so long as the board shall find
237 that the power is necessary to allow the board to fulfill the
238 purpose of the corporation, as provided by this article. In
239 the event that the board should determine to add one or more
240 powers, they may do so by amending their application of
241 formation. Without limiting the generality of the foregoing,
242 the board shall have and exercise all of the following powers:

243 (1) Recognize that the economy of today will not exist
244 tomorrow and implement policies that help this state, and
245 residents of this state, embrace that future.

246 (2) Take actions to make this state a hub for
247 technology, innovation, and entrepreneurship by partnering
248 with the private sector, state agencies, and state policy
249 makers to develop and implement programs and policies that
250 will lead to a more robust and inclusive economy for this
251 state.

252 (3) Support, financially and otherwise, the



HB441 Enrolled

253 establishment or growth, or both, of all of the following:

254 a. Marketing and branding the state including, but not
255 limited to, the state's business climate, the state's tax
256 rates and structures, the state's innovation-focused
257 incentives and abatements, the state's business related
258 programs, and the state's innovation and entrepreneurial
259 ecosystems.

260 b. Pursuing and supporting commercialization,
261 entrepreneurship, research and development, and technology
262 transfer facilities, funding, incentives, partnerships, events
263 and programs, including, but not limited to, all of the
264 following:

265 1. Creating, operating, and supporting accelerator or
266 similar programs, including, but not limited to, university
267 and corporate focused accelerator or similar programs.

268 2. Developing programming, incubators, and accelerators
269 that serve this state's startups and their founders, and
270 disseminating both in person and online.

271 3. Creating, operating, and supporting industry focused
272 research and development centers established by public
273 universities in collaboration with existing industry in
274 Alabama.

275 c. Incentivizing and providing funding to innovative
276 businesses or programs that support innovation in this state's
277 economy, including, but not limited to, the following:

278 1. Assisting recipients of Small Business Innovation
279 Research and Small Business Technology Transfer Research
280 funding.



HB441 Enrolled

281 2. Encouraging pre-seed, seed, venture capital, and
282 private equity funding activity in this state.

283 3. Supporting community development financial
284 institutions that serve residents of this state.

285 4. Supporting qualified STEM teachers and technology
286 staff teaching and working in rural or otherwise
287 under-performing or under-resourced schools in this state.

288 d. Engaging in rural initiatives that support
289 innovation, including, but not limited to, the creation,
290 operation, and support of entrepreneurial centers, and
291 marketing rural quality of life and recreational
292 opportunities.

293 e. Creating, operating, and supporting research and
294 development of a 21st-Century transportation system that
295 reflects emerging technologies and multi-modal concepts.

296 f. Attracting, recruiting, and retaining skilled
297 workers, STEM workers, and other in-state and out-of-state
298 two-year and four-year college, university, and community
299 college graduates, and engaging in other innovation focused
300 workforce development activities.

301 g. Supporting businesses owned or led, or both, by
302 aspiring Alabamians.

303 h. Supporting businesses headquartered in census tracts
304 that satisfy the definition of "low income communities" found
305 in 26 U.S.C. § 45D(e) as those communities were identified as
306 of January 1, 2015, or in such a community identified
307 thereafter.

308 (4) Adopt, alter, and repeal bylaws for the regulation



HB441 Enrolled

309 and conduct of the corporation's affairs and business, and for
310 the implementation of this article.

311 (5) Take actions as may be necessary or convenient to
312 accomplish any purpose of the corporation, or to exercise any
313 power of the corporation.

314 (6) Make and enter into contracts, leases, and
315 agreements, and take other actions as ~~may~~ in its judgment may
316 be necessary or desirable to accomplish any purpose, and to
317 exercise any power necessary for the accomplishment of the
318 purposes of the corporation or incidental to the powers
319 expressly set forth in this article.

320 (7) Appoint, employ, and contract with employees,
321 agents, advisors, consultants, and service providers,
322 including, but not limited to, attorneys, accountants,
323 financial experts, and other advisors, consultants, and agents
324 as ~~may~~ in its judgment may be necessary or desirable to
325 accomplish any purpose of the corporation or incidental to the
326 powers expressly set forth in this article, and to fix the
327 compensation of those persons.

328 (8) Manage, invest, and expend capital from the fund,
329 as provided in Section 41-10-806, and to provide for the
330 indemnification of directors.

331 (9) Use the financial resources of the corporation to
332 purchase, lease, or otherwise acquire real and personal
333 property, and to use, develop, operate, lease, or convey those
334 properties, as ~~may~~ in its judgment may be necessary or
335 desirable to accomplish any purpose of the corporation or
336 incidental to the powers expressly set forth in this article.



HB441 Enrolled

337 (10) Lend its credit to, or grant public monies and
338 things of value in aid of or to, any individual, firm,
339 corporation, or other business entity, public or private, as
340 may in its judgment be necessary or desirable to accomplish
341 any purpose of the corporation or incidental to the powers
342 expressly set forth in this article.

343 (11) Promote and solicit taxpayer donations for tax
344 credits that promote innovation in the state.

345 (12) Take any action necessary to exercise its rights
346 or fulfill its obligations relevant to the corporation under
347 state law.

348 (b) The board shall create an advisory committee which
349 shall provide information and make recommendations to the
350 board concerning the implementation of this article. The
351 advisory committee shall have no legal authority or other
352 responsibility over the actions of the corporation. The board
353 shall coordinate its appointments to assure the advisory
354 committee membership is inclusive and reflects the ~~so that~~
355 ~~diversity of racial, gender, race, and geographical areas,~~
356 urban, rural, and economic diversity of the ~~is reflective of~~
357 ~~the makeup of this~~ state. The members of the advisory
358 committee shall serve at the pleasure of the board. The board
359 shall appoint one member of the advisory committee to serve as
360 the chair of the advisory committee, and meetings of the
361 advisory committee may be called by its chair or by the board.
362 Members of the advisory committee may participate in a meeting
363 of the committee in person, by means of telephone conference,
364 video conference, or other similar communications equipment so



HB441 Enrolled

365 that all individuals participating in the meeting may hear
366 each other at the same time. Participation by any such means
367 shall constitute presence in person at a meeting for all
368 purposes, including for purposes of establishing a quorum, and
369 the affirmative vote of a majority of the members in
370 attendance shall be necessary for any action of the advisory
371 committee. The committee and its members shall not be subject
372 to Chapter 25 or 25A of Title 36 nor Section 36-12-40.

373 (c) The board may enter into agreements with one or
374 more economic development and innovation entities to exercise
375 all powers of the corporation, if the agreement does both of
376 the following:

377 (1) Requires regular reporting to the corporation by
378 the economic development and innovation entity.

379 (2) Allows for the overhead costs of the economic
380 development and innovation entity to be reimbursed or
381 otherwise paid only if directly related to the fulfillment of
382 the agreement, as determined by the corporation.

383 (d) (1) The board may make, enter into, and execute
384 contracts, agreements, and other instruments with, accept aid
385 and grants from, and cooperate with, any other person or
386 entity, including, but not limited to, all of the following:

387 a. The United States of America, the state, or any
388 agency, instrumentality, or political subdivision of either.

389 b. For profit or nonprofit private entities.

390 c. Public bodies, departments, or authorities,
391 including, but not limited to, the executive departments of
392 the state, to act on behalf of the board in carrying out



HB441 Enrolled

393 functions which the board determines are consistent with the
394 corporation's powers.

395 (2) Without limiting the foregoing, the corporation may
396 enter into an agreement with the Alabama Department of
397 Economic and Community Affairs pursuant to which the
398 corporation may exercise all rights, powers, and obligations
399 of the department relating to opportunity funds under Sections
400 40-18-6.1 and 41-10-46.01. Project agreements under Section
401 40-18-6.1, shall not be required to comply with Section
402 40-18-6.1(c). Project agreements under Sections 40-18-6.1 and
403 41-10-46.01 include investments in qualified opportunity zones
404 as defined in 26 U.S.C. § 1400Z-1 and low-income communities
405 as defined in 26 U.S.C. § 45D(e) as those communities were
406 identified as of January 1, 2015, or in such a community
407 identified thereafter.

408 (e) The corporation shall be, and shall operate as, a
409 public corporation and shall have a legal existence separate
410 and apart from the state and any county, municipality, or
411 political subdivision.

412 (f) Members of the board shall be subject to Chapter 25
413 of Title 36, but the corporation shall not be deemed to have
414 statewide jurisdiction for purposes of Section 36-25-14. For
415 the purposes of Chapter 25 of Title 36, the corporation shall
416 not be deemed a business, and a public official or public
417 employee holding a position with the corporation is not
418 precluded from taking official actions affecting the
419 corporation so long as there is no impermissible personal
420 gain. The board shall be subject to Chapter 25A of Title 36."



HB441 Enrolled

421 "§41-10-842

422 (a) An economic development organization may apply to
423 Innovate Alabama for Innovating Alabama tax credits to
424 undertake any of the following projects:

425 (1) The creation, operation, or support of an
426 accelerator for technology companies, provided that the
427 application is accompanied by an economic impact report.
428 Technology companies shall include companies that earn or
429 reasonably expect to earn at least 75 percent of their
430 revenues from sources described in Section 40-18-376.3(c)(1).

431 (2) The creation, operation, or support of programs
432 designed to provide funding, workforce development, or other
433 resources for an innovative company that meets either of the
434 following criteria:

435 a. The company is a for-profit business headquartered
436 in a community eligible for investment through the federal New
437 Markets Tax Credit program under 26 U.S.C. § 45D(e) as those
438 communities were identified as of January 1, 2015, or in such
439 a community identified thereafter, predominantly conducting an
440 activity in an innovative industry, has fewer than 15
441 employees at the time the funding agreement is executed, and
442 has average gross revenues of less than one million dollars
443 (\$1,000,000) in the company three years prior to the execution
444 of the funding agreement.

445 b. The company is a for-profit business that is
446 headquartered in Alabama, predominantly conducting an activity
447 in an innovative industry, has fewer than 75 employees at the
448 time the funding agreement is executed, and that is at least



HB441 Enrolled

449 51 percent owned and controlled by one or more individuals who
450 are United States Citizens and who are women or African
451 American. As used in this subdivision, an innovative industry
452 includes advanced manufacturing, aerospace, agriculture,
453 bioscience, biotechnology, electronics, energy and natural
454 resources, engineering, life sciences, and information
455 technology industries, and any other innovative industry as
456 determined by Innovate Alabama in its sole discretion.

457 (b) The application provided in subsection (a) shall
458 include proof that the economic development organization has
459 in full force and effect a conflict of interest policy
460 consistent with that found in the instructions to Form 1023
461 issued by the Internal Revenue Service.

462 (c) The application provided in subsection (a) shall
463 include a notarized affirmation by an officer of the economic
464 development organization that the submission of the
465 application did not violate the conflict of interest policy
466 referred to in subsection (b)."

467 Section 2. This act shall become effective on June 1,
468 2024.

