

**SB152 INTRODUCED**



1 KJT3A5-1

2 By Senators Singleton, Scofield, Reed, Chambliss, Sessions,  
3 Roberts, Coleman-Madison, Kelley, Stewart, Figures, Jones,  
4 Shelnut, Williams, Butler, Chesteen, Melson, Price, Allen,  
5 Livingston, Hovey, Bell, Carnley, Hatcher, Smitherman, Gudger

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7 RFD: Finance and Taxation Education

8 First Read: 04-Apr-23

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SYNOPSIS:

Under existing law, the Alabama Innovation Corporation is a public corporation created to support, financially and otherwise, growth in technology, innovation, and entrepreneurship sectors in the state.

This bill would authorize the Alabama Innovation Corporation to be known as Innovate Alabama.

Under existing law, the Alabama Innovation Corporation is also authorized to make Small Business Innovation Research and Small Business Technology Transfer Research matching grants to certain entities. As a condition to receiving a grant, the entity must make its primary place of business in Alabama, the place of residency of one top executive must be in Alabama, and 75 percent of its employees must reside in Alabama for five years.

This bill would add a one-year time frame for making Alabama the principal place of business, requiring the majority of top executives to reside in Alabama, and requiring a majority of employees reside in Alabama as a condition to receiving a grant.

This bill would create the Innovating Alabama tax credit program to allow certain economic development organizations that create, operate, or support certain programs relating to technology



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29 accelerators and underrepresented companies to claim  
30 specified tax credits.

31 This bill would also exempt working groups, task  
32 forces, and subcommittees of the Alabama Innovation  
33 Corporation from the Alabama Open Meetings Act.

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A BILL

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TO BE ENTITLED

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AN ACT

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41 Relating to economic development; to amend Sections  
42 41-10-802 and 41-10-822, Code of Alabama 1975, to provide for  
43 a name change for the Alabama Innovation Corporation and  
44 revise the residency requirements for certain grant  
45 recipients; to amend Section 41-10-805, Code of Alabama 1975,  
46 relating to the Board of Directors of the Alabama Innovation  
47 Corporation, to make conforming changes to accurately cite the  
48 Code of Alabama 1975; and to add a new Article 22, commencing  
49 with Section 41-10-840, to Chapter 10 of Title 41, Code of  
50 Alabama 1975, to reestablish the technology accelerator tax  
51 credit program and the underrepresented company tax credit  
52 program as the Innovating Alabama tax credit program; and to  
53 exempt working groups, task forces, and subcommittees of the  
54 Alabama Innovation Corporation from the Alabama Open Meetings  
55 Act.

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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



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57 Section 1. Sections 41-10-802, 41-10-805, and  
58 41-10-822, Code of Alabama 1975, are amended to read as  
59 follows:

60 "§41-10-802

61 (a) The Governor, the Speaker of the House of  
62 Representatives, and the President Pro Tempore of the Senate  
63 shall present to the Secretary of State an application, signed  
64 by each of them, for the formation of the Alabama Innovation  
65 Corporation, which may also be known as Innovate Alabama, as a  
66 public corporation, having a legal existence separate and  
67 apart from the state and any county, municipality, or  
68 political subdivision, which shall set forth all of the  
69 following:

70 (1) The name, official designation, and official office  
71 location of each of the applicants, together with a certified  
72 copy of the commission evidencing each applicant's right to  
73 office.

74 (2) The date on which each applicant was sworn into  
75 office and the term of office of each applicant.

76 (3) The name of the proposed public corporation, which  
77 shall be the Alabama Innovation Corporation, also known as  
78 Innovate Alabama.

79 (4) The location of the principal office of the  
80 proposed corporation.

81 (5) Any other matter relating to the corporation that  
82 the applicants may choose to insert and that is not  
83 inconsistent with this article or state law.

84 (b) The application shall be subscribed and sworn to by



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85 each applicant before an officer authorized by the laws of the  
86 state to take acknowledgments to deeds. The Secretary of State  
87 shall examine the application, and, if he or she finds that  
88 the application substantially complies with the requirements  
89 of this section, the application shall be filed and recorded  
90 in an appropriate book of records in the office of the  
91 Secretary of State.

92 (c) When the application has been made, filed, and  
93 recorded as provided in subsection (b), the applicants shall  
94 constitute a public corporation under the name stated in the  
95 application, and the Secretary of State shall make and issue  
96 to the applicants a certificate of incorporation pursuant to  
97 this article, under the Great Seal of the State, and shall  
98 record the certificate with the application. There shall be no  
99 fees paid to the Secretary of State in connection with the  
100 corporation.

101 (d) Notwithstanding any provision of law to the  
102 contrary, any corporation incorporated pursuant to this  
103 section shall not be deemed to be a part of the state for any  
104 purpose but shall be treated as a public corporation and body  
105 politic separate and apart from the state."

106 "§41-10-805

107 The board may enter into contracts, leases, agreements,  
108 investments, and may otherwise expend monies without  
109 compliance with Article ~~2~~ 5, commencing with Section ~~41-16-20~~  
110 41-4-110, of Chapter ~~16~~ 4 of Title 41~~7~~, and Chapter 2 of Title  
111 39, ~~or any requirements relating to the procurement of~~  
112 ~~professional service providers in Section 41-16-72~~. Solely as



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113 a result of entering into contracts, leases, agreements,  
114 investments, or otherwise, no for-profit or nonprofit private  
115 entity, nor the officers, employees, agents, or directors of  
116 any of the foregoing, shall become subject to Chapter 25 or  
117 Chapter 25A of Title 36; Article ~~2~~ 5, commencing with Section  
118 ~~41-16-20~~ 41-4-110, of Chapter ~~16~~ 4 of Title 41; Chapter 2 of  
119 Title 39; ~~Section 36-12-40, or any requirements relating to~~  
120 ~~the procurement of professional service providers in Section~~  
121 ~~41-16-72~~ or Article 3, commencing with Section 36-12-40, of  
122 Chapter 12 of Title 36."

123           "§41-10-822

124           The corporation may make Small Business Innovation  
125 Research and Small Business Technology Transfer Research  
126 matching grants to entities as provided in this section.

127           (1) The corporation may establish priorities,  
128 guidelines, standards, and processes by which the matching  
129 grants contemplated in this article may be awarded.

130           (2) The corporation shall require interested entities  
131 to complete applications on forms issued by the corporation.

132           (3) If an entity is seeking a matching grant for a  
133 Small Business Innovation Research award, the application  
134 shall demonstrate either of the following:

135           a. For a Phase I application, that the entity has  
136 received a Phase I Small Business Innovation Research award  
137 from a federal agency in response to a specific federal  
138 solicitation.

139           b. For a Phase II application, that the entity has  
140 received a Phase II Small Business Innovation Research award



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141 from a federal agency in response to a specific federal  
142 solicitation.

143 (4) If an entity is seeking a matching grant for a  
144 Small Business Technology Transfer Research award, the  
145 application shall demonstrate either of the following:

146 a. For a Phase I application, that the entity has  
147 received a Phase I Small Business Technology Transfer Research  
148 award from a federal agency in response to a specific federal  
149 solicitation.

150 b. For a Phase II application, that the entity has  
151 received a Phase II Small Business Technology Transfer  
152 Research award from a federal agency in response to a specific  
153 federal solicitation.

154 (5) Applications shall be considered by the board of  
155 the corporation. For an entity seeking a matching grant under  
156 subdivision (4), the corporation may give preference to  
157 entities seeking matching grants which conduct funded research  
158 in this state with HudsonAlpha Institute for Biotechnology,  
159 Southern Research Institute, public or nonprofit colleges or  
160 universities, community colleges, or any other entity located  
161 in the state which is described in 15 U.S.C. § 638(e)(8), with  
162 particular focus on underrepresented companies as defined in  
163 subsection (c) of Section 40-18-376.4, in a manner that  
164 reflects the diversity of gender, race, and geographical areas  
165 of the state, and small businesses conducting research in  
166 partnership with historically Black colleges and universities.  
167 Upon the approval of the board, the corporation may grant  
168 available funds to entities in amounts not to exceed the



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169 lesser of either of the following:

170 a. Fifty percent of the relevant federal Small Business  
171 Innovation Research or Small Business Technology Transfer  
172 award made to the entity.

173 b.1. For a matching grant awarded to match a federal  
174 Phase I award, one hundred thousand dollars (\$100,000); or

175 2. For a matching grant awarded to match a federal  
176 Phase II award, two hundred fifty thousand dollars (\$250,000).

177 (6) The corporation shall develop a marketing campaign  
178 directed at ensuring that underrepresented companies, as  
179 defined in subsection (c) of Section 40-18-376.4, and  
180 historically Black colleges and universities are aware of the  
181 federal Small Business Innovation Research and Small Business  
182 Technology Transfer Research programs, together with the  
183 Alabama award match program.

184 (7) The corporation shall develop a program that will  
185 provide federal Small Business Innovation Research and Small  
186 Business Technology Transfer Research program application  
187 assistance to underrepresented companies, as defined in  
188 subsection (c) of Section 40-18-376.4.

189 (8) The amount and all terms and conditions of the  
190 grant shall be memorialized in a grant agreement between the  
191 corporation and the entity, which agreement shall include all  
192 of the following terms and conditions:

193 a. The amount of the grant, or the formula under which  
194 the amount is computed.

195 b. The specific use of grant monies paid by the  
196 corporation, which use shall not be the recoupment of a





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197 personal investment in the entity or the repayment of debt.

198 c. The condition that the entity, within 12 months  
199 after receipt of the grant, shall have its primary place of  
200 business in this state, the place of residence of ~~one~~ the  
201 majority of its top executives in this state, and the place of  
202 residence of at least ~~75 percent~~ a majority of its employees  
203 for a period of five years after the effective date of the  
204 grant agreement in this state.

205 d. The requirement that the default of the entity,  
206 under any provision of the grant agreement, shall result in  
207 the repayment of any monies paid to the entity by the  
208 corporation, unless the entity should default because it  
209 ceases to be a going concern prior."

210 Section 2. A new Article 22, commencing with Section  
211 41-10-840, is added to Chapter 10 of Title 41, Code of Alabama  
212 1975, to read as follows:

213 Article 22.

214 §41-10-840

215 This article shall be known and may be cited as the  
216 Innovating Alabama Act.

217 §41-10-841

218 For purposes of this article, the following terms have  
219 the following meanings:

220 (1) ACCELERATOR. A company that, for a fixed term,  
221 educates and mentors early-stage technology companies  
222 recruited to a location in Alabama with the goal of  
223 accelerating the company's development and growth.

224 (2) ECONOMIC DEVELOPMENT ORGANIZATION. A local economic



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225 development organization or a state economic development  
226 organization.

227 (3) INNOVATE ALABAMA. The Alabama Innovation  
228 Corporation created by Section 41-10-802.

229 (4) INNOVATING ALABAMA TAX CREDIT. The tax credit  
230 provided for in subsection (a) of Section 41-10-844.

231 (5) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION. An  
232 organization that is determined by Innovate Alabama to meet  
233 both of the following criteria:

234 a. The organization is an Alabama entity not operating  
235 for profit, including, but not limited to, a municipality or  
236 county, an industrial board or authority, a chamber of  
237 commerce, or some other foundation or Alabama nonprofit  
238 corporation charged with improving a community or region of  
239 the state.

240 b. The organization has a record of supporting or  
241 otherwise participating in economic development in some part  
242 of the state.

243 (6) STATE ECONOMIC DEVELOPMENT ORGANIZATION. An  
244 organization that is determined by Innovate Alabama to be an  
245 Alabama entity not operating for profit which is charged with  
246 improving the state or a region of the state and has a record  
247 of supporting or otherwise participating in economic  
248 development in the state.

249 §41-10-842

250 (a) (1) An economic development organization may apply  
251 to Innovate Alabama for Innovating Alabama tax credits to  
252 undertake any of the following projects:



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253           a. The creation, operation, or support of an  
254 accelerator for technology companies, provided that the  
255 application is accompanied by an economic impact report.  
256 Technology companies shall include companies that earn or  
257 reasonably expect to earn at least 75 percent of their  
258 revenues from sources described in Section 40-18-376.3(c)(1).

259           b. The creation, operation, or support of programs  
260 designed to provide funding, workforce development, or other  
261 resources for an "innovative company" that meets either of the  
262 following criteria:

263           1. The company is a for-profit business headquartered  
264 in a community eligible for investment through the federal New  
265 Markets Tax Credit program under 26 U.S.C. § 45D(e),  
266 predominantly conducting an activity in an innovative  
267 industry, has fewer than 15 employees at the time the funding  
268 agreement is executed, and has average gross revenues of less  
269 than one million dollars (\$1,000,000) in the company three  
270 years prior to the execution of the funding agreement.

271           2. The company is a for-profit business that is  
272 headquartered in Alabama, predominantly conducting an activity  
273 in an innovative industry, has fewer than 75 employees at the  
274 time the funding agreement is executed, and that is at least  
275 51 percent owned and controlled by one or more persons who is  
276 a United States Citizen and who is a woman or is African  
277 American. As used in this subdivision, an innovative industry  
278 includes advanced manufacturing, aerospace, agriculture,  
279 bioscience, biotechnology, electronics, energy and natural  
280 resources, engineering, life sciences, and information



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281 technology industries, and any other innovative industry as  
282 determined by Innovate Alabama in its sole discretion.

283 (b) The application provided in subsection (a) shall  
284 include proof that the economic development organization has  
285 in full force and effect a conflict of interest policy  
286 consistent with that found in the instructions to Form 1023  
287 issued by the Internal Revenue Service.

288 (c) The application provided in subsection (a) shall  
289 include a notarized affirmation by an officer of the economic  
290 development organization that the submission of the  
291 application did not violate the conflict of interest policy  
292 referred to in subsection (b).

293 §41-10-843

294 (a) Innovate Alabama shall consider the application  
295 provided in subsection (a) of Section 41-1-842, and may  
296 approve the application if the applicant is deemed eligible.  
297 As to applications for projects located in communities which  
298 have the potential to provide additional funding separate from  
299 the Innovating Alabama tax credits, Innovate Alabama shall  
300 take into consideration whether the separate funding is to be  
301 provided to the project that is the subject of the  
302 application.

303 (b) The approval of an application by Innovate Alabama  
304 shall specify the amount of money which the economic  
305 development organization is allowed to receive so that the  
306 economic development organization can complete the project  
307 specified in the application.

308 (c) Following approval by Innovate Alabama, Innovate



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309 Alabama shall enter into an agreement with the economic  
310 development organization which shall do all of the following:

311 (1) Require the economic development organization to  
312 use funding received as a result of this article only for the  
313 purposes approved by Innovate Alabama as expressed in the  
314 agreement.

315 (2) Require the economic development organization to  
316 make periodic reports, not more often than annually, to  
317 Innovate Alabama, on the disposition of the funds. The report  
318 shall also include an economic impact report.

319 (3) Require the economic development organization to  
320 provide a review of its financial accounts as directed by  
321 Innovate Alabama.

322 (d) For any approved applications, Innovate Alabama  
323 shall notify the Department of Revenue of the information  
324 specified in subsection (b).

325 §41-10-844

326 (a) A taxpayer is allowed an Innovating Alabama tax  
327 credit to be applied against all of the following:

328 (1) To offset the income taxes levied in Chapter 18 of  
329 Title 40 or as an estimated tax payment of income taxes.

330 (2) To offset the state portion of the financial  
331 institution excise tax levied in Chapter 16 of Title 40.

332 (3) To offset the insurance premium tax levied by  
333 subsection (a) of Section 27-4A-3.

334 (4) To offset state license taxes levied by Article 2  
335 of Chapter 21 of Title 40.

336 (b) In no event shall the Innovating Alabama tax credit



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337 cause a taxpayer's tax liability to be reduced by more than 50  
338 percent. Unused credits may be carried forward for no more  
339 than five years.

340 (c) Innovating Alabama tax credits shall be granted to  
341 taxpayers using an online system administered by the  
342 Department of Revenue. The online system shall allow taxpayers  
343 to agree to make a cash contribution to an economic  
344 development organization which was approved by Innovate  
345 Alabama, as provided in Section 41-10-843. The online system  
346 shall ensure that Innovating Alabama tax credits are not  
347 granted for contributions to an economic development  
348 organization in excess of the amounts approved by Innovate  
349 Alabama, as provided in Section 41-10-843.

350 (d) The cumulative amount of funding approved pursuant  
351 to this section shall not exceed twenty-five million dollars  
352 (\$25,000,000) in a calendar year for calendar years beginning  
353 January 1, 2023. The Department of Commerce shall enter into a  
354 memorandum of understanding with Innovate Alabama to provide  
355 administrative assistance to manage the Innovating Alabama tax  
356 credit program; provided, that this memorandum of  
357 understanding shall terminate on December 31, 2023.

358 (e) Innovate Alabama shall reserve at least ten million  
359 dollars (\$10,000,000) of the amounts specified in subsection  
360 (d) for projects described in Section 41-10-842(a)(1)b.

361 (f) To the extent that an Innovating Alabama tax credit  
362 is used by a taxpayer, the taxpayer shall not be allowed any  
363 deduction that would have otherwise been allowed for the  
364 taxpayer's contribution. Tax credits may only be claimed by



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365 the donating taxpayer and may not be assigned or transferred  
366 to any other taxpayer. For purposes of this section, a  
367 donating taxpayer includes a taxpayer who is a shareholder of  
368 an Alabama S corporation or a partner or member of a  
369 subchapter K entity that made a contribution to an economic  
370 development organization which was approved by Innovate  
371 Alabama.

372 (g) The Department of Finance shall adopt rules to  
373 ensure that the Innovating Alabama tax credit program in no  
374 case would reduce the distribution for the Alabama Special  
375 Mental Health Trust Fund by using any unencumbered funds to  
376 ensure that an Innovating Alabama tax credit shall not be  
377 limited, prevented, or reduced.

378 §41-10-845

379 (a) Upon receipt of funding provided by the tax credit  
380 process in Section 41-10-844, the economic development  
381 organization shall proceed with the project that was specified  
382 in the application required by Section 41-10-842.

383 (b) As to a project described in subdivision (a)(1) of  
384 Section 41-10-842, the economic development organization shall  
385 report to Innovate Alabama upon the completion of the project  
386 and at such times as may be required or requested by Innovate  
387 Alabama.

388 §41-10-846

389 (a) All filings and applications made with any  
390 department of the state government shall be made using forms  
391 adopted by that department. The filing shall be treated as a  
392 tax return subject to penalties imposed by the Department of



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393 Revenue.

394 (b) Nothing in this article shall be construed to  
395 constitute a guarantee or assumption by the state of any debt  
396 of any company nor to authorize the credit of the state to be  
397 given, pledged, or loaned to any company.

398 (c) Nothing in this article shall be construed to make  
399 available to any taxpayer any right to the benefits conferred  
400 by this article absent strict compliance with this article.

401 (d) Nothing in this article shall be construed to limit  
402 the powers otherwise existing for the Department of Revenue to  
403 audit and assess a taxpayer claiming the Innovating Alabama  
404 tax credit.

405 (e) Innovate Alabama and the Department of Revenue may  
406 adopt rules as necessary to implement and administer this  
407 article.

408 §41-10-847

409 The Innovating Alabama tax credits provided in this  
410 article shall not be available for qualifying applicants as  
411 described in this article, for which applications are not  
412 approved on or prior to July 31, 2028, unless the Legislature  
413 enacts legislation to extend the date. This shall only affect  
414 the availability of credits for applications not approved on  
415 or prior to July 31, 2028, and shall not cause a reduction or  
416 suspension of any credits awarded on or prior to July 31,  
417 2028.

418 Section 3. Given the collaborative and dynamic nature  
419 of accelerator programs and Innovate Alabama generally, the  
420 working groups, task forces, and subcommittees of Innovate





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421 Alabama, shall not be subject to Chapter 25A of Title 36, Code  
422 of Alabama 1975, notwithstanding any other provision of law.

423           Section 4. This act shall become effective immediately  
424 following its passage and approval by the Governor, or its  
425 otherwise becoming law.