

SB331 INTRODUCED



1 SB331
2 DRY8NHT-1
3 By Senators Hatcher, Jones, Singleton, Coleman-Madison,
4 Coleman, Beasley
5 RFD: Fiscal Responsibility and Economic Development
6 First Read: 18-Apr-24



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SYNOPSIS:

The Growing Alabama Act, the Innovating Alabama Act, the Alabama Jobs Act, and the governing definitions and powers granted to Innovate Alabama rely on the federal definition of New Market Tax Credit census tracts for eligible projects. The federal map of census tracts will change on September 1, 2024, making some communities that are currently eligible for state incentives ineligible.

This bill would allow those existing communities to still qualify for the named initiatives and incentives.

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



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29 Section 1. Sections 40-18-376.4, 40-18-417.2,
30 41-10-801, 41-10-804, and 41-10-842, Code of Alabama 1975, are
31 amended to read as follows:

32 "§40-18-376.4

33 (a) This section shall be applicable to an
34 underrepresented company, as defined in this section. In
35 making the findings required by Section 40-18-373(1), an
36 underrepresented company that proposes a qualifying project
37 shall be an approved company for purposes of this section only
38 if the Secretary of Commerce makes the additional finding that
39 the qualifying project will increase economic diversity and
40 will benefit the state.

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

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

48 (2) A jobs credit against utility taxes, in an annual
49 amount up to 4 percent of the wages paid to Alabama resident
50 employees during the prior year.

51 (3) The investment credit provided in Section
52 40-18-376(a) shall have an incentive period not to exceed 15
53 years.

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

56 (1) The company is a for-profit business headquartered



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57 in a community eligible for investment through the federal New
58 Markets Tax Credit program under 26 U.S.C. § 45D(e) as those
59 communities were identified as of January 1, 2015, or in such
60 a community identified thereafter, has fewer than 10 employees
61 at the time the project agreement is executed, and has average
62 gross revenues of less than five hundred thousand dollars
63 (\$500,000) in the company's three years prior to the execution
64 of the project agreement; or

65 (2) The company is a for-profit business that is
66 independently owned and controlled and is at least 51 percent
67 owned and controlled by one or more underrepresented persons
68 or, in the case of a publicly-owned business, the company is a
69 for-profit business of which at least 51 percent of the stock
70 is owned and controlled by one or more underrepresented
71 persons and whose daily management and operations are under
72 the control of one or more underrepresented persons. As used
73 herein, an underrepresented person is a United States citizen
74 who is a woman or is African American."

75 "§40-18-417.2

76 (a) (1) A local economic development organization that
77 owns a site may apply to the Department of Commerce for
78 funding to solve an inadequacy involving the site. The
79 application by the local economic development organization
80 shall include at least one of the following:

81 a. If there is a pending expression of interest about
82 the site from an industry or business, a list of the site
83 preparation or public infrastructure work needed to make the
84 site acceptable to the industry or business.



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85 b. If the site has been offered to one or more
86 industries or businesses but the offer did not result in the
87 industry or business locating on the site, a list of the site
88 preparation or public infrastructure work that, if it had been
89 completed, would have made the site acceptable to the
90 industries or businesses.

91 c. If the site is an industrial or research park that
92 needs connections to interstates, highways, roadways, rail
93 systems, or sewer, fiber, electrical, gas, or water
94 infrastructure, a list of the site preparation or public
95 infrastructure work needed.

96 d. Capital improvements or economic development
97 activities at an inland port or intermodal facility, as
98 described in Section 40-18-417.1; provided that the
99 application is accompanied by an economic impact report on
100 such improvements or activities.

101 e. Any site improvement or public infrastructure work
102 in census tracts that meets the definition of low-income
103 communities pursuant to 26 U.S.C. § 45D(e) as those
104 communities were identified as of January 1, 2015, or in such
105 a community identified thereafter.

106 (2) An economic development organization may apply to
107 the Department of Commerce for funding to undertake the
108 construction, maintenance, promotion, operation, management,
109 leasing, and subleasing of an agricultural center that
110 includes a multi-use facility and related commercial and
111 noncommercial structures for livestock, equestrian, small
112 animal shows and events, spectator events, trade shows,



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113 educational conferences, agricultural and agricultural related
114 industries, educational, demonstrational or training purposes,
115 educational and training conferences or events, recreational
116 vehicle rallies, recreational vehicle multi-day parking,
117 hosting of corporate and non-corporate organization meetings,
118 use as fair grounds, operation of retail activities, and other
119 events and facilities expected to draw participants and
120 spectators from states located across the southeastern United
121 States, with a projected total annual economic impact upon
122 completion of all phases of the agricultural center of at
123 least thirty-five million dollars (\$35,000,000) and with the
124 related and supporting infrastructure and facilities having a
125 projected capital expenditure upon completion of all phases of
126 the agricultural center of at least one hundred million
127 dollars (\$100,000,000); provided that the application is
128 accompanied by an economic impact report on the agricultural
129 center.

130 (b) The application shall include quotes for the
131 completion of the work, following compliance with the
132 procedures set forth by the Department of Economic and
133 Community Affairs, as if the organization were disbursing
134 state funds received from the department.

135 (c) The application provided in paragraph (a)(1) a. or
136 b. shall include an estimate of the number of jobs, wages, and
137 capital investment which would have been undertaken by the
138 industries or businesses referred to in paragraph (a)(1) a. or
139 b.

140 (d) The application provided in subsection (a) shall



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141 include proof that the economic development organization has
142 in full force and effect a conflict of interest policy
143 consistent with that found in the instructions to Form 1023
144 issued by the Internal Revenue Service.

145 (e) The application provided in subsection (a) shall
146 include a notarized affirmation by an officer of the economic
147 development organization that the submission of the
148 application did not violate the conflict of interest policy
149 referred to in subsection (d)."

150 "§41-10-801

151 For the purposes of this article, the following terms
152 ~~shall~~ have the following meanings:

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

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

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

166 c. The person does not hold, and is not actively
167 pursuing, a baccalaureate degree or does not have a parent or
168 legal guardian who holds a baccalaureate degree.



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

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

172 (3) CORPORATION. The Alabama Innovation Corporation
173 created by this article as an authority organized as a public
174 corporation having a legal existence separate and apart from
175 the state and any county, municipality, or political
176 subdivision.

177 (4) ECONOMIC DEVELOPMENT AND INNOVATION ENTITY.

178 a. A nonprofit corporation that possesses all of the
179 following characteristics:

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

183 2. Has a record of, or can demonstrate that it is
184 capable of, serving the entire state on matters involving
185 economic development.

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

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

191 b. In determining whether a nonprofit corporation
192 qualifies as an economic development and innovation entity,
193 the board may attribute to the nonprofit corporation the
194 experiences of its officers, staff, and directors with other
195 nonprofit corporations.

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



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197 a. Demand deposits (interest bearing) in federally
198 insured banks, and interest bearing deposits, whether or not
199 evidenced by certificates of deposits, in federally insured
200 banks; provided, however, that the deposits plus interest
201 shall be fully secured by obligations described in paragraphs
202 b. and c., to the extent that the deposits plus interest
203 exceed insurance available from the Federal Deposit Insurance
204 Corporation, or from any agency of the United States of
205 America that may succeed to the functions of the Federal
206 Deposit Insurance Corporation.

207 b. Bonds, notes, and other evidences of indebtedness
208 that are direct obligations of the United States of America or
209 that are unconditionally guaranteed as to both principal and
210 interest by the United States of America.

211 c. Bonds, debentures, notes, or other evidences of
212 indebtedness issued or guaranteed by any federal agencies or
213 government sponsored enterprises authorized to issue their own
214 debt instruments including, without limitation, to any of the
215 following: Federal Farm Credit Bank, Federal Intermediate
216 Credit Banks, the Export-Import Bank of the United States,
217 Federal Land Banks, the Federal National Mortgage Association,
218 the Governmental National Mortgage Association, the Federal
219 Financing Bank, Federal Banks for Cooperatives, Federal Home
220 Loan Banks, Federal Home and Loan Mortgage Association, or the
221 Farmers Home Administration.

222 d. Repurchase agreements with federally insured banks
223 or with government bond dealers reporting to and trading with
224 the Federal Reserve Bank of New York, provided that the



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225 repurchase agreements are secured by obligations described in
226 paragraphs b. and c.

227 e. Interest-bearing time deposits, whether or not
228 evidenced by certificates of deposit, in savings and loan
229 associations: (i) the deposits of which are insured to the
230 maximum extent possible by the Federal Savings and Loan
231 Insurance Corporation or any agency of the United States of
232 America that may succeed to its functions; and (ii) the
233 principal office of which is located in the state. The
234 deposits plus interest shall be secured by obligations
235 described in paragraphs b. and c., to the extent that the
236 deposits plus interest exceed insurance available from the
237 Federal Savings and Loan Insurance Corporation or from any
238 agency of the United States of America that may succeed to the
239 functions of the Federal Savings and Loan Insurance
240 Corporation.

241 f. Other legal investments which the corporation
242 determines will have the effect of growing an innovative
243 economy.

244 (6) FUND. The Alabama Innovation Fund.

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

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

249 (9) STEM. Science, technology, engineering, and
250 mathematics."

251 "§41-10-804

252 (a) The board shall have all of the powers necessary to



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253 carry out and effectuate the purposes of this article. The
254 foregoing sentence shall be construed broadly, so that the
255 failure to state a power of the board shall not be considered
256 a limitation upon the board, so long as the board shall find
257 that the power is necessary to allow the board to fulfill the
258 purpose of the corporation, as provided by this article. In
259 the event that the board should determine to add one or more
260 powers, they may do so by amending their application of
261 formation. Without limiting the generality of the foregoing,
262 the board shall have and exercise all of the following powers:

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

266 (2) Take actions to make this state a hub for
267 technology, innovation, and entrepreneurship by partnering
268 with the private sector, state agencies, and state policy
269 makers to develop and implement programs and policies that
270 will lead to a more robust and inclusive economy for this
271 state.

272 (3) Support, financially and otherwise, the
273 establishment or growth, or both, of all of the following:

274 a. Marketing and branding the state including, but not
275 limited to, the state's business climate, the state's tax
276 rates and structures, the state's innovation-focused
277 incentives and abatements, the state's business related
278 programs, and the state's innovation and entrepreneurial
279 ecosystems.

280 b. Pursuing and supporting commercialization,



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281 entrepreneurship, research and development, and technology
282 transfer facilities, funding, incentives, partnerships, events
283 and programs, including, but not limited to, all of the
284 following:

285 1. Creating, operating, and supporting accelerator or
286 similar programs, including, but not limited to, university
287 and corporate focused accelerator or similar programs.

288 2. Developing programming, incubators, and accelerators
289 that serve this state's startups and their founders, and
290 disseminating both in person and online.

291 3. Creating, operating, and supporting industry focused
292 research and development centers established by public
293 universities in collaboration with existing industry in
294 Alabama.

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

298 1. Assisting recipients of Small Business Innovation
299 Research and Small Business Technology Transfer Research
300 funding.

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

303 3. Supporting community development financial
304 institutions that serve residents of this state.

305 4. Supporting qualified STEM teachers and technology
306 staff teaching and working in rural or otherwise
307 under-performing or under-resourced schools in this state.

308 d. Engaging in rural initiatives that support



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309 innovation, including, but not limited to, the creation,
310 operation, and support of entrepreneurial centers, and
311 marketing rural quality of life and recreational
312 opportunities.

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

316 f. Attracting, recruiting, and retaining skilled
317 workers, STEM workers, and other in-state and out-of-state
318 two-year and four-year college, university, and community
319 college graduates, and engaging in other innovation focused
320 workforce development activities.

321 g. Supporting businesses owned or led, or both, by
322 aspiring Alabamians.

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

328 (4) Adopt, alter, and repeal bylaws for the regulation
329 and conduct of the corporation's affairs and business, and for
330 the implementation of this article.

331 (5) Take actions as may be necessary or convenient to
332 accomplish any purpose of the corporation, or to exercise any
333 power of the corporation.

334 (6) Make and enter into contracts, leases, and
335 agreements, and take other actions as ~~may~~ in its judgment may
336 be necessary or desirable to accomplish any purpose, and to



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337 exercise any power necessary for the accomplishment of the
338 purposes of the corporation or incidental to the powers
339 expressly set forth in this article.

340 (7) Appoint, employ, and contract with employees,
341 agents, advisors, consultants, and service providers,
342 including, but not limited to, attorneys, accountants,
343 financial experts, and other advisors, consultants, and agents
344 as ~~may~~ in its judgment may be necessary or desirable to
345 accomplish any purpose of the corporation or incidental to the
346 powers expressly set forth in this article, and to fix the
347 compensation of those persons.

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

351 (9) Use the financial resources of the corporation to
352 purchase, lease, or otherwise acquire real and personal
353 property, and to use, develop, operate, lease, or convey those
354 properties, as ~~may~~ in its judgment may be necessary or
355 desirable to accomplish any purpose of the corporation or
356 incidental to the powers expressly set forth in this article.

357 (10) Lend its credit to, or grant public monies and
358 things of value in aid of or to, any individual, firm,
359 corporation, or other business entity, public or private, as
360 may in its judgment be necessary or desirable to accomplish
361 any purpose of the corporation or incidental to the powers
362 expressly set forth in this article.

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



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365 (12) Take any action necessary to exercise its rights
366 or fulfill its obligations relevant to the corporation under
367 state law.

368 (b) The board shall create an advisory committee which
369 shall provide information and make recommendations to the
370 board concerning the implementation of this article. The
371 advisory committee shall have no legal authority or other
372 responsibility over the actions of the corporation. The board
373 shall coordinate its appointments to assure the advisory
374 committee membership is inclusive and reflects the ~~so that~~
375 ~~diversity of racial,~~ gender, ~~race, and~~ geographical areas,
376 urban, rural, and economic diversity of the ~~is reflective of~~
377 ~~the makeup of this~~ state. The members of the advisory
378 committee shall serve at the pleasure of the board. The board
379 shall appoint one member of the advisory committee to serve as
380 the chair of the advisory committee, and meetings of the
381 advisory committee may be called by its chair or by the board.
382 Members of the advisory committee may participate in a meeting
383 of the committee in person, by means of telephone conference,
384 video conference, or other similar communications equipment so
385 that all individuals participating in the meeting may hear
386 each other at the same time. Participation by any such means
387 shall constitute presence in person at a meeting for all
388 purposes, including for purposes of establishing a quorum, and
389 the affirmative vote of a majority of the members in
390 attendance shall be necessary for any action of the advisory
391 committee. The committee and its members shall not be subject
392 to Chapter 25 or 25A of Title 36 nor Section 36-12-40.



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

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

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

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

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

409 b. For profit or nonprofit private entities.

410 c. Public bodies, departments, or authorities,
411 including, but not limited to, the executive departments of
412 the state, to act on behalf of the board in carrying out
413 functions which the board determines are consistent with the
414 corporation's powers.

415 (2) Without limiting the foregoing, the corporation may
416 enter into an agreement with the Alabama Department of
417 Economic and Community Affairs pursuant to which the
418 corporation may exercise all rights, powers, and obligations
419 of the department relating to opportunity funds under Sections
420 40-18-6.1 and 41-10-46.01. Project agreements under Section



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421 40-18-6.1, shall not be required to comply with Section
422 40-18-6.1(c). Project agreements under Sections 40-18-6.1 and
423 41-10-46.01 include investments in qualified opportunity zones
424 as defined in 26 U.S.C. § 1400Z-1 and low-income communities
425 as defined in 26 U.S.C. § 45D(e) as those communities were
426 identified as of January 1, 2015, or in such a community
427 identified thereafter.

428 (e) The corporation shall be, and shall operate as, a
429 public corporation and shall have a legal existence separate
430 and apart from the state and any county, municipality, or
431 political subdivision.

432 (f) Members of the board shall be subject to Chapter 25
433 of Title 36, but the corporation shall not be deemed to have
434 statewide jurisdiction for purposes of Section 36-25-14. For
435 the purposes of Chapter 25 of Title 36, the corporation shall
436 not be deemed a business, and a public official or public
437 employee holding a position with the corporation is not
438 precluded from taking official actions affecting the
439 corporation so long as there is no impermissible personal
440 gain. The board shall be subject to Chapter 25A of Title 36."

441 "§41-10-842

442 (a) An economic development organization may apply to
443 Innovate Alabama for Innovating Alabama tax credits to
444 undertake any of the following projects:

445 (1) The creation, operation, or support of an
446 accelerator for technology companies, provided that the
447 application is accompanied by an economic impact report.
448 Technology companies shall include companies that earn or



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449 reasonably expect to earn at least 75 percent of their
450 revenues from sources described in Section 40-18-376.3(c)(1).

451 (2) The creation, operation, or support of programs
452 designed to provide funding, workforce development, or other
453 resources for an innovative company that meets either of the
454 following criteria:

455 a. The company is a for-profit business headquartered
456 in a community eligible for investment through the federal New
457 Markets Tax Credit program under 26 U.S.C. § 45D(e) as those
458 communities were identified as of January 1, 2015, or in such
459 a community identified thereafter, predominantly conducting an
460 activity in an innovative industry, has fewer than 15
461 employees at the time the funding agreement is executed, and
462 has average gross revenues of less than one million dollars
463 (\$1,000,000) in the company three years prior to the execution
464 of the funding agreement.

465 b. The company is a for-profit business that is
466 headquartered in Alabama, predominantly conducting an activity
467 in an innovative industry, has fewer than 75 employees at the
468 time the funding agreement is executed, and that is at least
469 51 percent owned and controlled by one or more individuals who
470 are United States Citizens and who are women or African
471 American. As used in this subdivision, an innovative industry
472 includes advanced manufacturing, aerospace, agriculture,
473 bioscience, biotechnology, electronics, energy and natural
474 resources, engineering, life sciences, and information
475 technology industries, and any other innovative industry as
476 determined by Innovate Alabama in its sole discretion.



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477 (b) The application provided in subsection (a) shall
478 include proof that the economic development organization has
479 in full force and effect a conflict of interest policy
480 consistent with that found in the instructions to Form 1023
481 issued by the Internal Revenue Service.

482 (c) The application provided in subsection (a) shall
483 include a notarized affirmation by an officer of the economic
484 development organization that the submission of the
485 application did not violate the conflict of interest policy
486 referred to in subsection (b)."

487 Section 2. This act shall become effective on June 1,
488 2024.