

ACT No. 2015 - 24

1 HB59  
2 164956-3  
3 By Representative Lee  
4 RFD: Economic Development and Tourism  
5 First Read: 03-MAR-15  
6 PFD: 02/27/2015



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ENROLLED, An Act,

To enact the Alabama Reinvestment and Abatements Act; to provide certain incentives to promote capital reinvestment by existing industry in Alabama; to authorize abatements of construction related transaction taxes, state ad valorem taxes, and municipal and county noneducational ad valorem taxes in certain instances; to provide that municipal taxes could be abated only by the municipality, county taxes only by the county, and state taxes only by the Governor; to authorize a refund of new, incremental taxes levied by Sections 40-21-82(a) and 40-21-102(a), Code of Alabama 1975, for a qualifying project; to provide for proof that such incentive is due to be granted; to provide for the distribution of utility taxes when a company claims such incentive; to authorize AIDT to perform employee training for the operation of any equipment for qualifying projects; to provide procedures for the granting of abatements; to provide for the promulgation of forms for information to be submitted to a department of state government, and that such submissions shall be treated as tax returns; to provide for audits of companies claiming the incentives; to provide for the continued applicability of Chapter 9B of Title 40, Code of Alabama 1975, to private users; to provide that no company shall have any right to incentives that are granted absent

1 strict compliance with this act; to provide that no cause of  
2 action shall exist for the denial of any benefit under this  
3 act; to authorize abatements of state ad valorem taxes and  
4 local noneducational ad valorem taxes for a period of up to 20  
5 years; to provide that neither an inducement nor a request for  
6 inducement is required to apply for, grant, or receive any  
7 abatement of taxes allowed to be abated; to update the NAICS  
8 codes and include other activities; to provide that abatements  
9 would end if the property has ceased to be used for its  
10 intended purpose for at least 6 months; for ad valorem tax  
11 abatements longer than 10 years, to provide that municipal  
12 taxes could be abated only by the municipality, county taxes  
13 only by the county, and state taxes only by the Governor; to  
14 provide for the disposition of financial remuneration paid by  
15 private users after an abatement, based on the tax proceeds  
16 which would have been paid; to create a new Chapter 9G of  
17 Title 40, Code of Alabama 1975; to amend Sections 40-9B-3 and  
18 40-9B-5, Code of Alabama 1975; to provide for the promulgation  
19 of regulations; to provide for the severability of invalid  
20 provisions; to provide for the repeal of conflicting laws; to  
21 provide for an effective date.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act shall be known as the "Alabama  
24 Reinvestment and Abatements Act".

1           Section 2. A new Chapter 9G of Title 40, Code of  
2 Alabama 1975, is created to read as follows:

3           § 40-9G-1. For purposes of the chapter, the  
4 following words and phrases shall have the following meaning:

5           (1) APPROVED ACTIVITY. The conduct of an activity  
6 that is predominantly any one or more of the following:

7           a. Described by NAICS Code 1133, 115111, 2121,  
8 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482,  
9 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493,  
10 511, 5121 (other than 51213), 51221, 517, 518 (without regard  
11 to the premise that data processing and related services be  
12 performed in conjunction with a third party), 51913, 52232,  
13 54133 (if predominantly in furtherance of another activity  
14 described in this article), 54134 (if predominantly in  
15 furtherance of another activity described in this article),  
16 54138, 5415, 541614, 5417, 55 (if not for the production of  
17 electricity), 561422 (other than establishments that originate  
18 telephone calls), 562213, 56291, 56292, 611512, 927 or 92811.

19           b. The production of biofuel as such term is defined  
20 in Section 2-2-90(c)(2).

21           c. The conduct of original investigations undertaken  
22 on a systematic basis to gain new knowledge or the application  
23 of research findings or other scientific knowledge to create  
24 new or significantly improved products or processes.

1           d. The national or regional headquarters for a  
2 company that conducts significant business operations outside  
3 the state and that will serve as the principal office of the  
4 company's principal operating officer with chief  
5 responsibility for the daily business operations of the  
6 company.

7           e. A target of the state's economic development  
8 efforts pursuant to either of the following:

9           (i) The Accelerate Alabama Strategic Economic  
10 Development Plan adopted in January 2012 by the Alabama  
11 Economic Development Alliance, created by Executive Order  
12 Number 21 of the Governor on July 18, 2011, or any amended  
13 version or successor document thereto; or

14           (ii) A type listed in a regulation adopted by the  
15 Department of Commerce, other than a regulation submitted as  
16 an emergency rule.

17           Notwithstanding the foregoing, an approved activity  
18 shall not predominantly concern farming activities involving  
19 trees, animals or crops, nor the retail sale of tangible  
20 personal property or services. This provision shall not be  
21 deemed to exclude customer service centers, call centers or  
22 headquarters otherwise allowed by this subsection (1).

23           (2) COMPANY. Anyone or anything which has the powers  
24 to own a project and have employees.

1           (3) NAICS CODE. Any sector, subsector, industry  
2 group, industry or national industry of the 2012 North  
3 American Industry Classification System, or any similar  
4 classification system developed in conjunction with the United  
5 States Department of Commerce or Office of Management and  
6 Budget.

7           (4) QUALIFYING PROJECT. Any project a. that proposes  
8 to invest in capital expenditures that equal or exceed  
9 \$2,000,000 as part of any addition, expansion, improvement,  
10 renovation, re-opening, or rehabilitation of a facility, or  
11 replacement of any existing equipment or tangible personal  
12 property; b. that predominantly involves an approved activity;  
13 and c. for which no project agreement has been entered into  
14 with the Governor for the provision of other incentives.

15           (5) UTILITY TAXES. The taxes imposed by Sections  
16 40-21-82 and 40-21-102.

17           § 40-9G-2.

18           (a) For any qualifying project, an abatement may be  
19 allowed for ad valorem taxes and construction related  
20 transaction taxes.

21           (1) The abatement of construction related  
22 transaction taxes shall be subject to and shall follow the  
23 procedures, provisions, limitations, and definitions of  
24 Chapter 9B, except that capitalized repairs, rebuilds,

1 maintenance and replacement equipment shall qualify for  
 2 abatements.

3 (2) The abatement of ad valorem taxes shall be  
 4 subject to and shall follow the procedures, provisions,  
 5 limitations, and definitions of Chapter 9B, except as follows:

6 a. The amount of the ad valorem tax abatement shall  
 7 be equal to the ad valorem taxes owed, minus the ad valorem  
 8 taxes owed from the tax year immediately before the qualifying  
 9 project was placed in service;

10 b. As to any ad valorem tax abatement, capitalized  
 11 repairs, rebuilds, maintenance and replacement equipment shall  
 12 qualify for abatements; and

13 c. Regardless of the length of the abatement, county  
 14 noneducational taxes may be abated only with the consent by  
 15 resolution of the governing body of the county, municipal  
 16 noneducational taxes may be abated only with the consent by  
 17 resolution of the governing body of the municipality, and  
 18 state ad valorem taxes may be abated only with the consent of  
 19 the Governor. The governing body of a county and a  
 20 municipality may separately authorize one or more public  
 21 industrial authorities to provide by resolution for such  
 22 consent on its behalf.

23 (b) For any qualifying project, a refund of utility  
 24 taxes may be allowed for up to a ten-year period. The refund  
 25 shall be calculated and paid annually, as follows:

1           (1) The amount of the refund shall be equal to the  
2 utility taxes paid, minus the utility taxes paid on average  
3 during the three tax years immediately before the qualifying  
4 project was placed in service.

5           (2) For each year of the incentive period for the  
6 utility tax refund, the incentivized company shall submit to  
7 the Department of Commerce a certification as to the utility  
8 taxes paid during the prior year. Following such examination  
9 as it deems necessary, the Department of Commerce may certify  
10 the information and deliver same to the Department of Revenue.  
11 Thereafter, the Department of Revenue shall calculate the  
12 correct refund and issue it directly to the company.

13           The Department of Finance shall promulgate  
14 regulations to ensure that the refund in no case would reduce  
15 the distribution for the Alabama Special Mental Health Trust  
16 Fund.

17           An incentivized company may assign and convey a  
18 utility tax refund to another entity if substantially all of  
19 the assets of the incentivized company are assigned and  
20 conveyed in the same transaction. Proof of such transfer shall  
21 be submitted to the Departments of Commerce and Revenue.

22           (c) For any qualifying project, AIDT training for  
23 new or current employees to operate new and replacement  
24 equipment may be provided.



1           (d) In order to receive the incentives described in  
2 subsections (b) or (c), the following shall occur:

3           (1) For any company that proposes a qualifying  
4 project, the Secretary of Commerce shall make the following  
5 findings:

6           a. That the project is in fact a qualifying project;

7           b. That the company or any related company has not  
8 defaulted on a project agreement or similar agreement, or any  
9 economic incentive agreement at any time during the last 10  
10 years; and

11           c. That the qualifying project will promote the  
12 continued and sustained operation of the company's business  
13 operations in Alabama.

14           (2) Upon making affirmative findings on the criteria  
15 set forth in paragraph (1), the Secretary of Commerce shall  
16 recommend to the Governor that the company and qualifying  
17 project be approved for one or more of the incentives  
18 described in subsections (b) and (c). The name of the company  
19 and information collected about it and the qualifying project  
20 by the Secretary shall be forwarded to the Governor.

21           (3) After reviewing the information provided by the  
22 Secretary of Commerce, the Governor shall also determine  
23 whether the company and the qualifying project meet the  
24 criteria set forth in paragraph (1). If the Governor makes

1 such a finding, the company and qualifying project may claim  
2 the incentives provided in subsections (b) and (c).

3 (e) All filings made by a private party with any  
4 department of the state government shall be made using forms  
5 promulgated by such department. Any such filing shall be  
6 treated as a tax return, subject to penalties imposed by the  
7 Department of Revenue.

8 (f) Nothing in this chapter shall be construed to  
9 limit the powers otherwise existing for the Department of  
10 Revenue to audit and assess a company. Nothing in this chapter  
11 shall be construed to limit the applicability of Chapter 9B to  
12 a private user, as such term is used in Chapter 9B.

13 (g) Nothing in this chapter shall be construed to  
14 make available to any company any right to the benefits  
15 conferred by this chapter absent strict compliance with this  
16 chapter. No cause of action shall exist for the denial of any  
17 benefit under this article.

18 (h) The Departments of Commerce and Revenue shall  
19 promulgate regulations to implement and administer the  
20 provisions of this act.

21 Section 3. Sections 40-9B-3 and 40-9B-5, Code of  
22 Alabama 1975, are amended to read as follows:

23 "§40-9B-3.

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

1           (1) ABATE, ABATEMENT. A reduction or elimination of  
2 a taxpayer's liability for tax or payments required to be made  
3 in lieu thereof. An abatement of transaction taxes imposed  
4 under Chapter 23 of this title, or payments required to be  
5 made in lieu thereof, shall relieve the seller from the  
6 obligation to collect and pay over the transaction tax as if  
7 the sale were to a person exempt, to the extent of the  
8 abatement, from the transaction tax.

9           (2) ALTERNATIVE ENERGY RESOURCES. The definition  
10 given in Section 40-18-1.

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

20           (4) DATA PROCESSING CENTER. An establishment at  
21 which not less than 20 new jobs are located, the average  
22 annual total compensation, including benefits, of such new  
23 jobs to be not less than forty thousand dollars (\$40,000) and  
24 such establishment is engaged in the provision of complete  
25 processing and specialized reports from data, the provision of

1 automated data processing and data entry services, the  
2 provision of an infrastructure for hosting or data processing  
3 services, the provision of specialized hosting activities, the  
4 provision of application service provisioning, the provision  
5 of general time-share mainframe facilities, the provision or  
6 operation of computer equipment or enabling software for the  
7 processing, storage, backup, retrieval, communication or  
8 distribution of data, or some combination of the foregoing,  
9 without regard to whether any other activities are conducted  
10 at the establishment.

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

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

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

3           (8) INDUCEMENT. Refers to an agreement, or an  
4 "inducement agreement," entered into between a private user  
5 and a public authority or county or municipal government  
6 and/or a resolution or other official action, an "inducement  
7 resolution," "inducement letter," or "official action" adopted  
8 by a public authority or county or municipal government, in  
9 each case expressing, among other things, the present intent  
10 of such public authority or county or municipal government to  
11 issue bonds in connection with the private use property  
12 therein described. Notwithstanding any provision in this  
13 chapter to the contrary, neither an inducement nor a request  
14 for inducement shall be required to apply for, grant, or  
15 receive any abatement of taxes allowed to be abated under this  
16 chapter.

17           (9) INDUSTRIAL DEVELOPMENT PROPERTY. Real and/or  
18 personal property acquired in connection with establishing or  
19 expanding an industrial or research enterprise in Alabama.

20           (10) INDUSTRIAL OR RESEARCH ENTERPRISE.

21           a. Any trade or business ~~described in the 2007 North~~  
22 ~~American Industry Classification System, promulgated by the~~  
23 ~~Executive Office of the President of the United States, Office~~  
24 ~~of Management and Budget, Sectors 31 (other than National~~

1 Industry predominately consisting of any one or more of the  
2 following:

3 1. Described by NAICS Code 1133, 115111, 2121,  
4 22111, 221330, 31 (other than 311811), 32, and 33; Subsectors  
5 423, 424, 493 where the trade or business will (i) provide  
6 logistics services related to the distribution of goods, (ii)  
7 employ 50 or more persons within the first two years after  
8 being placed in service, and (iii) involve a capital  
9 investment of at least five million dollars (\$5,000,000),  
10 except that the investment in a trade or business located in a  
11 favored geographic area, as that term is defined in Section  
12 40-18-190(a)(6), must exceed one million dollars (\$1,000,000),  
13 511, and 927; Industry Groups 2121, 5417, 5415, and 5182 33,  
14 423, 424, 482, 4862, 48691, 48699, 48819, 4882, 4883 (other  
15 than 48833), 493, 511, 5121 (other than 51213), 51221, 517,  
16 518 (without regard to the premise that data processing and  
17 related services be performed in conjunction with a  
18 third-party); Industries 11331 and 48691; and National  
19 Industries 115111, 517110, 541380, and party), 51913, 52232,  
20 54133 (if predominantly in furtherance of another activity  
21 described in this article), 54134 (if predominantly in  
22 furtherance of another activity described in this article),  
23 54138, 5415, 541614, 5417, 55 (if not for the production of  
24 electricity), 561422 (other than establishments that originate  
25 telephone calls), and includes such trades and businesses as

1 ~~may be hereafter added by an act of the Legislature,~~  
2 ~~reclassified in any subsequent publication of the North~~  
3 ~~American Industry Classification System or other industry~~  
4 ~~classification system developed in conjunction with the United~~  
5 ~~States Department of Commerce, or any process or treatment~~  
6 ~~facility which recycles, reclaims, or converts any materials,~~  
7 ~~which include solids, liquids, or gases, to a reusable product~~  
8 562213, 56291, 56292, 611512, 927 or 92811.

9 2. A target of the state's economic development  
10 efforts pursuant to either of the following:

11 (i) The Accelerate Alabama Strategic Economic  
12 Development Plan adopted in January 2012 by the Alabama  
13 Economic Development Alliance, created by Executive Order  
14 Number 21 of the Governor on July 18, 2011, or any amended  
15 version or successor document thereto; or

16 (ii) A type listed in a regulation adopted by the  
17 Department of Commerce, other than a regulation submitted as  
18 an emergency rule.

19 Notwithstanding the foregoing, the activities  
20 described in this definition shall not predominantly concern  
21 farming activities involving trees, animals or crops, nor the  
22 retail sale of tangible personal property or services. This  
23 provision shall not be deemed to exclude customer service  
24 centers or call centers otherwise allowed or provided for  
25 herein.

1           b. With respect to abatements granted in accordance  
2 with Section 40-9B-9, and only with respect to such  
3 abatements, "industrial or research enterprise" means any  
4 trade or business described in ~~the 2007 North American~~  
5 ~~Industry Classification System within Subsector~~ NAICS Code 493  
6 ~~(Warehousing and Storage), Industry Number 488310 (Port and~~  
7 ~~Harbor Operations), Industry Number or 488320 (Marine Cargo~~  
8 ~~Handling)~~, when such trade or business is conducted on  
9 premises in which the Alabama State Port Authority has an  
10 ownership, leasehold, or other possessory interest and such  
11 premises are used as part of the operations of the Alabama  
12 State Port Authority.

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

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



1 e. "Industrial or research enterprise" also includes  
2 any plant, property, or facility that meets both of the  
3 following:

4 1. It produces electricity from:

5 (i) Alternative energy resources and has capital  
6 costs of at least one hundred million dollars (\$100,000,000);  
7 or

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

10 2. All or a portion of the plant, property, or  
11 facility is owned by one or more of the following:

12 (i) A utility described in Section 37-4-1(7)a., ~~an~~

13 (ii) An entity organized under the provisions of  
14 Chapter 6 of Title 37, ~~or an~~

15 (iii) An authority both organized and existing  
16 pursuant to the provisions of Chapter 50A of Title 11 and  
17 subject to the payments required to be made in lieu of ad  
18 valorem, sales, use, license, and severance taxes imposed by  
19 Section 11-50A-7, ~~or an~~

20 (iv) An entity in which one or more of the foregoing  
21 owns an interest.

22 f. "Industrial or research enterprise" also includes  
23 any headquarters facility.

24 g. "Industrial or research enterprise" also includes  
25 any data processing center.

1           h. "Industrial or research enterprise" also includes  
2 any research and development facility.

3           i. "Industrial or research enterprise" also includes  
4 any renewable energy facility.

5           j. "Industrial or research enterprise" also includes  
6 any tourism destination attraction.

7           (11) MAJOR ADDITION. Any addition to an existing  
8 industrial development property that equals the lesser of: 30  
9 percent of the original cost of the industrial development  
10 property or two million dollars (\$2,000,000). For purposes of  
11 this subsection, the original cost of existing industrial  
12 development property shall be the amount of industrial  
13 development property with respect to which an abatement was  
14 granted under this chapter when the property was constructed,  
15 or if the existing industrial development property was  
16 constructed before January 1, 1993, the maximum amount that  
17 would have been allowed if the provisions of this chapter had  
18 applied at the time it was constructed. Only property that  
19 constitutes industrial development property shall be taken  
20 into account in making the determination in the previous  
21 sentence. Major addition shall include any addition costing at  
22 least two million dollars (\$2,000,000) which constitutes an  
23 industrial or research enterprise, regardless of whether added  
24 to an existing industrial development property.

1 (12) MAXIMUM EXEMPTION PERIOD. Except as provided in  
 2 Section 40-9B-11, ~~either a period equal to the shorter of:~~

3 a. ~~A period equal to the shorter of~~ Either of the  
 4 following:

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

13 ~~2. The weighted average economic life of the assets~~  
 14 ~~comprising such property, determined consistently with the~~  
 15 ~~provisions of 26 U.S.C. § 147(b) and measured from the date~~  
 16 ~~such property is placed in service; or~~

17 ~~b~~2. Exclusively with respect to ~~a~~one or more private  
 18 users of a data processing center, the following:

19 (i) ~~a~~A period of 10 years from and after the date on  
 20 which private use property is or becomes owned, for federal  
 21 income tax purposes, by such private user or users (including  
 22 the lessor and any lessee with respect co-location centers),  
 23 if the aggregate capital investment in the data processing  
 24 center by ~~the~~ such private user or users does not exceed  
 25 \$200,000,000 within 10 years from the date on which ~~the~~a

1 private user commences the acquisition, construction, and  
2 equipping of the data processing center,

3 (ii) ~~a~~A period of 20 years from and after the date  
4 on which private use property is or becomes owned, for federal  
5 income tax purposes, by such private user or users (including  
6 the lessor and any lessee with respect to co-location  
7 centers), if the aggregate capital investment in the data  
8 processing center by ~~the~~such private user or users exceeds  
9 \$200,000,000 but is not greater than \$400,000,000 within 10  
10 years from the date on which ~~the~~a private user commences the  
11 acquisition, construction, and equipping of the data  
12 processing center, or

13 (iii) ~~a~~A period of 30 years from and after the date  
14 on which private use property is or becomes owned, for federal  
15 income tax purposes, by such private user or users (including  
16 the lessor and any lessee with respect to co-location  
17 centers), if the aggregate capital investment in the data  
18 processing center by ~~the~~such private user or users exceeds  
19 \$200,000,000 within 10 years from the date on which ~~the~~a  
20 private user commences the physical work of constructing and  
21 equipping the data processing center and exceeds \$400,000,000  
22 within 20 years from the date on which ~~the~~a private user  
23 commences the acquisition, construction, and equipping of the  
24 data processing center.

1           For purposes of this subparagraph b2., a private  
2 user's aggregate capital investment in a data processing  
3 center shall include all real and personal property comprising  
4 a data processing center, the costs of which may be  
5 capitalized for federal income tax purposes. In no event shall  
6 abatements of construction related transaction taxes or  
7 noneducational ad valorem taxes granted for a data processing  
8 center apply beyond the expiration of the applicable maximum  
9 exemption period~~;~~ or

10           b. The period ending on the date on which the  
11 property has ceased, for 6 consecutive months, to be used in  
12 the active conduct of an industrial or research enterprise.

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

15           (14) NAICS CODE. Any sector, subsector, industry  
16 group, industry or national industry of the 2012 North  
17 American Industry Classification System, or any similar  
18 classification system developed in conjunction with the United  
19 States Department of Commerce or Office of Management and  
20 Budget.

21           (15) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem  
22 taxes, or payments required to be made in lieu thereof,  
23 imposed by the state, counties, municipalities, and other  
24 taxing jurisdictions of Alabama that are not required to be

1 used for educational purposes or for capital improvements for  
2 education.

3 (156) PERSON. Includes any individual, partnership,  
4 trust, estate, or corporation.

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

13 (178) PRIVATE USE INDUSTRIAL PROPERTY. Private use  
14 property that also constitutes industrial development  
15 property.

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

1 valorem, sales, use, license, and severance taxes imposed by  
2 Section 11-50A-7.

3 (~~19~~20) PUBLIC AUTHORITY. A corporation created for  
4 public purposes pursuant to a provision of the Constitution of  
5 Alabama of 1901, or a general or local law that authorized it  
6 to issue bonds, the interest on which is exempt from the  
7 Alabama income tax, as in effect on May 21, 1992.

8 (~~20~~1) PUBLIC INDUSTRIAL AUTHORITY. A public  
9 authority authorized to issue bonds to acquire, construct,  
10 equip, or finance industrial development property.

11 (~~21~~2) RENEWABLE ENERGY FACILITY. Any plant,  
12 property, or facility that either:

13 a. Produces electricity or natural gas, in whole or  
14 in part, from biofuels as such term is defined in Section  
15 2-2-90(c) (2) or from renewable energy resources as such term  
16 is defined in Section 40-18-1(30) with the exception that  
17 hydropower production shall be excluded from such definition;  
18 or

19 b. Produces biofuel as such term is defined in  
20 Section 2-2-90(c) (2).

21 (~~22~~3) RESEARCH AND DEVELOPMENT FACILITY. An  
22 establishment engaged in conducting original investigations  
23 undertaken on a systematic basis to gain new knowledge or  
24 applying research findings or other scientific knowledge to

1 create new or significantly improved products or processes, or  
2 both.

3 (234) STATEMENT OF INTENT. A written statement of  
4 intent to claim an abatement provided in this chapter, or to  
5 petition for local tax abatement, relating to an industrial or  
6 research enterprise described in paragraph e. of subdivision  
7 (10) of this subsection that is filed with the Department of  
8 Revenue at any time prior to the date on which the industrial  
9 or research enterprise described in paragraph e. of  
10 subdivision (10) of this subsection is placed in service in  
11 accordance with such procedures and on such form or forms as  
12 may be prescribed by the Department of Revenue. Such statement  
13 of intent shall contain a description of the industrial or  
14 research enterprise described in paragraph e. of subdivision  
15 (10) of this subsection; the date on which the acquisition,  
16 construction, installation, or equipping of the industrial or  
17 research enterprise described in paragraph e. of subdivision  
18 (10) of this subsection was commenced or is expected to  
19 commence; the actual or, if not known, the estimated capital  
20 costs of the industrial or research enterprise described in  
21 paragraph e. of subdivision (10) of this subsection; the  
22 number of new employees to be employed at the industrial or  
23 research enterprise described in paragraph e. of subdivision  
24 (10) of this subsection; and any other information required by  
25 the Department of Revenue.



1           (245) TOURISM DESTINATION ATTRACTION. A commercial  
2 enterprise which is open to the public not less than 120 days  
3 during a calendar year and is designed to attract visitors  
4 from inside or outside of the State of Alabama, typically for  
5 its inherent cultural value, historical significance, natural  
6 or man-made beauty, or entertainment or amusement  
7 opportunities. The term shall include, but not be limited to,  
8 a cultural or historical site; a botanical garden; a museum; a  
9 wildlife park or aquarium open to the public that cares for  
10 and displays a collection of animals or fish; an amusement  
11 park; a convention hotel and conference center; a water park;  
12 or a spectator venue or arena.

13           A tourism destination attraction shall not include a  
14 facility primarily devoted to the retail sale of goods; a  
15 shopping center; a restaurant; a movie theater; a bowling  
16 alley; a fitness center; a miniature golf course; or a  
17 nightclub. Provided, however, that the capital costs of the  
18 construction of a tourism destination attraction may include  
19 the capital costs associated with the construction of any  
20 retail establishment, restaurant or other portion of the  
21 tourism destination attraction. The term also does not include  
22 any gaming facility or establishment that the Secretary of the  
23 Department of Commerce deems to be serving the local  
24 community.

1           (b) The abatements of ad valorem taxes, and payments  
2 in lieu thereof, allowed by amendments to this section by Act  
3 2008-275 shall become effective for projects for which  
4 statements of intent are filed after December 31, 2011. No ad  
5 valorem taxes, or payments in lieu thereof, shall be abated  
6 for periods prior to January 1, 2012. The other abatements  
7 allowed by amendments made to this section by Act 2008-275  
8 shall become effective after December 31, 2011.

9           For a qualifying industrial or research enterprise  
10 described in Section 40-9B-3(a)(10)j., the approval of the  
11 abatement of a specified ad valorem tax or construction  
12 related tax levied or imposed by a county or municipality, or  
13 payments required to be made in lieu thereof, shall take  
14 effect only upon adoption of a resolution by the governing  
15 body of that county or municipality approving such abatement  
16 or abatements."

17           "§40-9B-5.

18           "(a) Subject to the geographical or jurisdictional  
19 or other limitations specified in subsections (b), (c), and  
20 (d), the governing body of a municipality, a county, or a  
21 public industrial authority may grant abatements of all of the  
22 taxes allowed to be abated under Section 40-9B-4 with respect  
23 to private use industrial property.

24           (b) (1) The abatements authorized to be granted  
25 pursuant to subsection (a) for construction related

1 transaction taxes and for ad valorem taxes for a period not to  
 2 exceed 10 years may be granted:

3 ~~(1)~~a. By the governing body of a municipality, with  
 4 respect to private use industrial property located within the  
 5 limits of the municipality or within the police jurisdiction  
 6 of the municipality; provided, however, that the governing  
 7 body shall not grant an abatement of any county taxes unless  
 8 the body has also abated the corresponding municipal taxes.

9 ~~(2)~~b. By the governing body of a county, with  
 10 respect to private use industrial property located in the  
 11 county and not within a municipality or the police  
 12 jurisdiction of a municipality, unless consented to by  
 13 resolution of the governing body of the municipality.

14 ~~(3)~~c. By the governing body of a public industrial  
 15 authority, with respect to private use industrial property  
 16 located within the jurisdiction of the public industrial  
 17 authority; provided, however, that any municipal public  
 18 industrial authority shall not grant an abatement of any  
 19 county taxes unless the authority has also abated the  
 20 corresponding municipal taxes.

21 (2) The abatements authorized to be granted pursuant  
 22 to subsection (a) for ad valorem taxes for a period longer  
 23 than 10 years may be granted:

24 a. By the governing body of a municipality, with  
 25 respect to private use industrial property located within the

1 limits of the municipality or within the police jurisdiction  
2 of the municipality, but only as to municipal noneducational  
3 taxes.

4 b. By the governing body of a county, with respect  
5 to private use industrial property located in the county, but  
6 only as to county noneducational taxes.

7 c. By the Governor, with respect to private use  
8 industrial property located in the state, but only as to state  
9 taxes.

10 The governing body of a county and a municipality  
11 may separately authorize one or more public industrial  
12 authorities to provide by resolution for such consent on its  
13 behalf.

14 (3) Notwithstanding the provisions of subsection (b)  
15 of this section, abatements authorized to be granted pursuant  
16 to subsection (a) for data processing centers may be granted  
17 in accordance with subsection (b)(1) of this section without  
18 regard to the time limitation stated in subsection (b)(1).

19 ~~(c) Should any municipality or municipal industrial~~  
20 ~~authority abating a county tax receive payments,~~  
21 ~~contributions, or other financial or in-kind awards from a~~  
22 ~~corporation or other entity in exchange for such abatement,~~  
23 ~~the payment, contribution, or other financial or in-kind~~  
24 ~~contribution shall be divided between the municipality and~~  
25 ~~county based upon the municipality's and county's portion of~~

1 ~~the tax proceeds which would have been paid if the tax were~~  
2 ~~not abated by the authority. This subsection shall only apply~~  
3 ~~to a municipal industrial authority which does not have a~~  
4 ~~board member appointed by the affected county commission. If a~~  
5 ~~tax is abated pursuant to this chapter, any payment,~~  
6 ~~contribution, or other financial or in-kind award received~~  
7 ~~from a private user or related party shall be divided between~~  
8 ~~the parties whose taxes were abated based upon the tax~~  
9 ~~proceeds which would have been paid if the taxes had not been~~  
10 ~~abated, unless the party receiving such award can prove that~~  
11 ~~the award was not related to the granting of any abatement.~~

12 (d) Any abatement of county taxes granted by a  
13 municipality or municipal industrial authority shall not be  
14 valid until the expiration of (1) 10 days following the date  
15 of physical delivery to the county commission or (2) 13 days  
16 following the date of mailing by certified mail to the county  
17 commission of a copy of the resolution granting such  
18 abatement. Proof of delivery by affidavit of service, in the  
19 case of physical delivery, or by certified mail receipt, in  
20 the case of mailing by certified mail, shall be furnished to  
21 the Department of Revenue at the same time as the filing of  
22 the abatement agreement under Section 40-9B-6. If the  
23 procedures herein prescribed are followed, any such abatement  
24 shall be effective as of the date granted."

1           Section 4. If a court of competent jurisdiction  
2           adjudges invalid or unconstitutional any clause, sentence,  
3           paragraph, section, or part of this act, such judgment or  
4           decree shall not affect, impair, invalidate, or nullify the  
5           remainder of this act, but the effect of the decision shall be  
6           confined to the clause, sentence, paragraph, section, or part  
7           of this act adjudged to be invalid or unconstitutional.

8           Section 5. All laws or parts of laws which conflict  
9           with this act are repealed.

10          Section 6. This act shall become effective ninety  
11          days following its passage and approval by the Governor, or  
12          its otherwise becoming law.

