

HB317

By Representative Johnson (K)
RFD Economic Development and Tourism
Rd 1 25-JAN-18

SYNOPSIS: This bill would revise notification and confidentiality provisions governing certain economic incentives provided for by law and would clarify what incentives are subject to the notification requirements.
This bill would also provide that certain activity relating to the award of certain economic incentives would not constitute lobbying.
This bill would also codify Act 91-635, 1991 Regular Session, as amended by Act 97-645, 1997 Regular Session, with certain revisions, authorizing the State Industrial Development Authority to sell and issue bonds for the financing of industrial development and site preparations and for other industrial development purposes.

A BILL
TO BE ENTITLED
AN ACT

Relating to economic development; to amend Section 41-29-3, Code of Alabama 1975, to revise notification and confidentiality provisions governing certain economic incentives; to provide that certain activity relating to the award of certain economic incentives would not constitute lobbying; to clarify what incentives are subject to the notification requirements; to add Article 5 to Chapter 29 of Title 41, Code of Alabama 1975, to codify Act 91-635, 1991 Regular Session, as amended by Act 97-645, 1997 Regular Session, with certain revisions, authorizing the State Industrial Development Authority to sell and issue bonds for the financing of industrial development and site preparations and for other industrial development purposes.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the The Alabama Jobs Enhancement Act.

Section 2. Section 41-29-3, Code of Alabama 1975, is amended to read as follows:

§41-29-3.

"(a)(1) The Secretary of Commerce shall be notified, ~~either orally or~~ in writing, about the general parameters of a project if an entity is considering locating or expanding a facility at a site within this state and intends to claim any of the incentives provided by the State of Alabama that are described in subdivision (2). The required notification should be made as soon as the project's parameters are generally known or when a site or sites have been identified by ~~an investing a project~~ entity ~~or entities~~ or a visit is made to the State of Alabama by the project entity or its representative. The initial required notification may be made on an anonymous basis (i.e., "Project Alpha") in order to protect the confidentiality of a proposed project. Upon timely notifying the secretary within the time frame specified in this subdivision, the secretary shall transmit a letter to the ~~company~~ project entity or its representative acknowledging receipt of the required notification (the

"notification acknowledgment letter").

~~"(2) The required notification set forth in subdivision (1) applies to (i) capital investment credits pursuant to Act 95-187, as amended; (ii) site preparation grants pursuant to Act 91-635, as amended; (iii) funding for access roads and bridges through the Alabama Industrial Access Road and Bridge Corporation pursuant to Act 85-549, as amended; (iv) training or other assistance from the Alabama Industrial Development Training Program where the annual expenditures of cash is estimated to be in excess of one million dollars (\$1,000,000); and any of the following:~~

"a. The jobs credit provided for by Section 40-18-375.

"b. The investment credit provided for by Section 40-18-376.

"c. Any action by a local government body pursuant to Amendment 772 of the Constitution of Alabama of 1901, or local amendment of similar effect.

"d. Any abatement of taxes pursuant to Chapters 9B or 9G of Title 40.

"e. The port credit provided for by Section 40-18-403.

"f. The growing Alabama credit provided for by Section 40-18-413.

"g. Site preparation grants pursuant to Article 5 of Chapter 29 of Title 41.

"h. Funding for access roads and bridges through the Alabama Industrial Access Road and Bridge Corporation pursuant to Chapter 6 of Title 23.

"i. Training or other assistance from the Alabama Industrial Development Training Program.

"j. Any grant of federal funds administered or otherwise involving any state or local government, agency, department, body, or other entity.

~~"(v) any~~ k. Any direct or indirect cash payment for a project from the State of Alabama, whether in the form of an in-kind contribution of a site, building, or equipment, or otherwise.

"(3)a. Unless the secretary should specially determine to the contrary, the notification set forth in subdivision (1) shall be available for public inspection two years after a project entity publicly commits to a site for development, whether the publicly-committed site is in this state or elsewhere.

"b. Notwithstanding any other provision of law, including, but not limited to, Chapter 25 of Title 36, the terms "lobby" and "lobbying" do not include promoting, or in any manner influencing or attempting to influence, the award, approval, or action related to any of the incentives listed in subdivision (2) or any other economic development incentive by any state or local government, agency, department, body, or other entity, regardless of whether the award, approval, or action is by grant or contract or otherwise.

"c. For purposes of this section, "economic development incentive" means any incentive sought by or offered to a project by a state or local government, agency, department, body, or other entity that is authorized by the laws of the state, including, but not limited to, those incentives listed in subdivision (2). The term does not mean legislation before the Legislature.

~~"(b) AH~~ Except as provided in Chapter 25A of Title 36, all information concerning a proposed project which is provided to the secretary and the Department of Commerce any state or local government, agency,

department, or other entity shall be confidential. Any state or local government, agency, department, or other entity, or the secretary on their behalf ~~The secretary~~ is authorized to enter into a confidentiality agreement with a ~~prospective project~~ entity which prohibits the disclosure of the identity of the prospective entity and any information obtained, whether orally or in writing, about the entity's proposed project. Unless the secretary should specially determine to the contrary, such confidentiality agreements shall terminate five years after a project entity publicly commits to a site for development, whether the publicly-committed site is in this state or elsewhere.

"(c) The secretary may adopt rules to implement this section.

~~"(e) All written statements of intent to claim the capital credit which may be filed with the Department of Revenue at anytime prior to the date on which a qualifying project is placed in service pursuant to Section 40-18-191, shall include the notification acknowledgment letter from the secretary.~~

~~"(d) All applications to the State Industrial Development Authority for site preparation grants pursuant to Act 91-635, 1991 Regular Session, as last amended by Act 97-645, 1997 Regular Session, shall include the notification acknowledgment letter from the secretary.~~

~~"(e) All applications to the Industrial Access Road and Bridge Corporation for funding for access roads and bridges shall include the notification acknowledgment letter from the secretary.~~

~~"(f) All companies seeking training or other assistance from the Alabama Industrial Development Training Program shall file an application with the Secretary of Commerce if the annual expenditure of cash is estimated to be in excess of one million dollars (\$1,000,000). The application shall include the notification acknowledgment letter from the secretary. The secretary shall be responsible for reviewing, coordinating, and processing each application. The secretary shall have 30 days to process each application.~~

~~"(g) An application must be filed with the secretary before any direct or indirect cash payments are expended for a project from the State of Alabama, whether the payment is in the form of an in-kind contribution of a site, building, equipment, or otherwise. The application shall include the notification acknowledgment letter from the secretary. The secretary shall be responsible for reviewing, coordinating, processing, and approving each application for direct or indirect cash payments and shall have 30 days to approve or deny each application."~~

Section 3. A new Article 5 is added to Chapter 29 of Title 41, Code of Alabama 1975, to read as follows:

Article 5.

Section 41-29-501.

(a) For the purposes of this article, the following words and phrases shall have the following meanings:

(1) **AUTHORITY.** The public corporation organized pursuant to the provisions of Sections 41-10-20 through 41-10-32, Code of Alabama 1975.

(2) **AUTHORIZED PURPOSE.** Any one or more of the purposes for which grants are herein authorized to be made as specified in Section 41-29-503(a).

(3) **BOARD OF DIRECTORS.** The board of directors of the authority.

(4) **BOND.** The bonds issued under the provisions of this article.

(5) CAPITAL COSTS. All costs and expenses incurred by one or more investing companies in connection with the acquisition, construction, installation and equipping of a qualifying project during the period commencing with the date on which such acquisition, construction, installation and equipping commences and ending on the date on which the qualifying project is placed in service, including, without limitation of all of the following:

- a. The costs of acquiring, constructing, installing, equipping and financing a qualifying project, including all obligations incurred for labor and to contractors, subcontractors, builders, and materialmen.
- b. The costs of acquiring land or rights in land and any cost incidental thereto, including recording fees.
- c. The costs of contract bonds and of insurance of all kinds that may be required or necessary during the acquisition, construction or installation of a qualifying project.
- d. The costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction and installation of a qualifying project.
- e. The costs associated with installation of fixtures and equipment; surveys, including archaeological and environmental surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, paving and provisions for drainage, storm water retention, installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the property.
- f. All other costs of a nature comparable to those described, including, without limitation, all project costs which are required to be capitalized for federal income tax purposes pursuant to 26 U.S.C. § 263A.
- g. Costs otherwise defined as capital costs that are incurred by the investing company where the investing company is the lessee under a lease that: (i) has a term of not less than five years, and (ii) is characterized as a capital lease for federal income tax purposes. Capital costs shall not include property owned or leased by the investing company or a related party before the commencement of the acquisition, construction, installation or equipping of the qualifying project unless such property was physically located outside the state for a period of at least one year prior to the date on which the qualifying project was placed in service.
- h. Costs either paid or incurred by (i) a public industrial development board or authority (including, without limitation, the State Industrial Development Authority), city, county, or other public corporation or political subdivision (a "public entity") for the benefit of a qualifying project where such costs are treated as costs paid by an investing company with respect to the qualifying project for federal income tax purposes (such costs shall not include amounts contributed by a public entity to a qualifying project as a capital contribution, grant, or gift except to the extent that an investing company has cost basis in the contribution, grant, or gift for federal income tax purposes); or (ii) a related party to an investing company to the extent such costs are included in or taken into account in determining the investing company's federal income tax basis in the qualifying project, whether or not incurred by an investing company.

(6) GRANTEE. A county, municipality, local industrial development board or authority or economic development council or authority, airport authority, port authority or public corporation or political subdivision, department, or agency of this state authorized to own or possess by lease a project site, to which a grant of money is made as provided in Section 41-29-503 hereof.

(7) HEADQUARTERS FACILITY. A facility described by Section 40-18-372(1)d. or f.

(8) **INDUSTRIAL, WAREHOUSING, OR RESEARCH ACTIVITY.** Any trade or business predominantly conducting an activity described in Section 40-18-372(1).

(9) **INVESTING COMPANY.** Any corporation, partnership, limited liability company, proprietorship, trust or other business' entity, regardless of form, making a qualified investment.

(10) **PERSON.** Unless limited to a natural person by the context in which it is used, includes a private firm, a private association, a public or private corporation or partnership (whether limited liability company, limited liability partnership or other form of business organization), a municipality, a county, or an agency, department or instrumentality of the state or of a county or municipality.

(11) **PREPARATION OF PROJECT SITES.** The preparation of project sites including, without limitation, (i) preparation of a means of access to the site, (ii) provision for adequate drainage of the site to prevent the accumulation of excess natural waters thereon, (iii) boundary and topographical surveying, clearing and grubbing, and excavating, (iv) the reasonable rehabilitation of buildings and other structures, and (v) other work relative to site preparation deemed necessary or appropriate.

(12) **PROJECT.** Any land, building or other improvement, whether or not previously in existence, located or to be located in the state.

(13) **PROJECT SITES.** Land and structures located thereon owned by a grantee or potential grantee on which a qualifying project has been or will be located and which is held for sale or lease to a person for use as a qualifying project.

(14) **QUALIFYING INVESTMENTS.** The undertaking by one or more investing companies of a qualifying project.

(15) **QUALIFYING PROJECT.** A project to be sponsored or undertaken by one or more investing companies (i) at which the predominant trade or business activity conducted will constitute industrial, warehousing or research activity, or (ii) which qualifies as a headquarters facility.

(16) **STATE.** The State of Alabama.

(b) The definitions set forth above shall be deemed applicable whether the words defined are used in the singular or plural. Whenever used herein, any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

Section 41-29-502.

(a) In addition to all powers heretofore conferred on it by acts heretofore enacted by the Legislature of Alabama, and in addition to all other powers conferred on it in this article, the authority is hereby authorized to sell and issue its bonds, not exceeding one hundred million dollars (\$100,000,000) in aggregate principal amount, for the purposes of making the grants of money authorized in Section 41-29-503 hereof and to anticipate by the issuance of its bonds the receipt of the revenues herein appropriated and pledged; provided the authority shall not issue more than ten million dollars (\$10,000,000) in aggregate principal amount of such bonds in any two-year period; and provided there shall not be more than forty million dollars (\$40,000,000) in aggregate principal amount of such bonds, in addition to bonds heretofore issued by the authority, outstanding at any one time, but excluding for this purpose refunding bonds, which shall not be considered in determining such limit. The bonds authorized hereby may be sold in one or more series.

(b) It is further provided that the authority shall be exempt from the laws of the state governing usury or prescribing or limiting interest rates, including, without limitation, the provisions of Chapter 8 of Title 8 of

the Code of Alabama 1975.

Section 41-29-503.

(a) The authority is hereby authorized to make grants of money derived from the sale of its bonds, to grantees for use by the grantees for any one or more of the following purposes:

- (1) The making of surveys to determine the location of suitable project sites in the locality of the grantee;
- (2) The making of surveys to determine the availability of labor in the locality of the grantee and to classify such labor in terms of skills and educational level;
- (3) The preparation of project sites; or
- (4) Any combination of any of the foregoing which the grantees consider appropriate and necessary for the promotion of industrial development in their respective localities.

(b) Provided, however, that 20 percent of the grant funds shall be expended specifically in rural areas of the state and/or areas with high unemployment and low personal income levels. The Director of the State Industrial Development Authority shall report annually to the Chairs of the House Government Finance and Appropriations Committee and the Senate Finance and Taxation-General Fund Committee and the Legislative Fiscal Officer the status of all grants allotted and specifically those grants allotted in rural areas of the state and/or areas with high unemployment and low personal income levels.

(c) Every grant of money made by the authority, any part of which is made from the proceeds of the authority's bonds, shall be made subject to the terms and conditions set forth herein, which are here by declared to be legally enforceable, and may be enforced by the authority, in any court of competent jurisdiction.

(d) Each application to the authority shall set forth the following:

- (1) A description of the qualifying project;
- (2) The estimated capital costs of the qualifying project; and
- (3) Such other information, certification, and agreements as may be required by the authority to be contained in any application.

(e) Subject to receipt of an application and other required documentation and agreements in form and substance satisfactory to the authority, the grantee, subject to availability of funds, shall receive grants as follows:

- (1) For qualifying projects having capital costs of less than \$200,000, an amount equal to 5 percent of the capital costs of the qualifying project;
- (2) For qualifying projects having capital costs of not less than \$200,000, but less than \$500,000, an amount equal to 3.5 percent of the capital costs of the qualifying project, with a minimum grant of \$10,000;
- (3) For qualifying projects having capital costs of not less than \$500,000, but less than \$1,000,000, an amount equal to 2.5 percent of the capital costs of the qualifying project, with a minimum grant of \$20,000;
- (4) For qualifying projects having capital costs of not less than \$1,000,000, but less than \$2,000,000, an

amount equal to 1.5 per cent of the capital costs of the qualifying project, with a minimum grant of \$28,000;

(5) For qualifying projects having capital costs of not less than \$2,000,000, but less than \$10,000,000, an amount equal to 1 percent of the capital costs of the qualifying project, with a minimum grant of \$32,000; and

(6) For qualifying projects having capital costs of not less than \$10,000,000, an amount equal to .75 percent of the capital costs of the qualifying project, with a minimum grant of \$100,000 and a maximum grant of \$150,000.

(f) The authority shall have the power to audit the disbursements by the grantees from such grant or grants.

(g) The authority may specify any appropriate terms and conditions to facilitate the enforcement of the foregoing provisions of this section.

(h) The Director of the State Industrial Development Authority shall report annually to each member of the Legislature on the number and amount and location of grants distributed by the authority. The report for the previous fiscal year shall be reported by the second legislative day of each regular session.

(i) All grants made by the State Industrial Development Authority prior to the effective date of this act are hereby ratified, confirmed, and approved.

Section 41-29-504.

The bonds of the authority shall be signed by its president and attested by its secretary, and the seal of the authority shall be affixed thereto or a facsimile of such seal shall be printed or otherwise reproduced thereon; provided, that (a) a facsimile of the signature of one, but not both, of said officers may be printed or otherwise reproduced on any such bonds in lieu of being manually subscribed thereon, and (b) a facsimile of the signatures of both of the said officers may be printed or otherwise reproduced on such bonds in lieu of being manually affixed thereof if the authority, in its proceedings with respect to issuance of the bonds, provides for manual authentication of such bonds and the secretary designates a trustee or paying agent or named individuals who are employees of the state and who are assigned to the finance department or the state treasurer's office of the state to authenticate the bonds. Any bonds of the authority may be executed and delivered by it any time and from time to time and shall be in such form or forms and such denomination or denominations and of such tenor and maturity or maturities, shall bear such rate or rates of interest, which may be variable rates, shall be payable at such times and evidenced in such manner, and may contain such other provisions not inconsistent herewith, all as may be provided by the resolution of the board of directors of the authority under which such bonds are authorized to be issued; provided, that no bond of the authority shall have a specified maturity date later than twenty years after its date. Any bond of the authority may be made subject to redemption at the option of the authority at such times and after such notice and on such conditions and at such redemption price or prices as may be provided in the resolution under which it is authorized to be issued; provided, that those bonds of the authority having specified maturity dates more than ten years after their date shall be made subject to redemption at the option of the authority not later than the end of the tenth year after their date, and on any interest payment date thereafter, under such terms and conditions and at such redemption price or prices as may be provided in the resolution under which such bonds are authorized to be issued. Bonds of the authority may be sold at such price or prices and at such time or times as the board of directors of the authority may consider advantageous, either at public or private sale and by negotiation or by competitive bid. Bonds of the authority sold by competitive bid must be sold, whether on sealed bids or at public auction, to the bidder whose bid reflects the lowest true interest cost to the authority for the bonds being sold, computed from their date to their respective maturities; provided, that if no bid acceptable to the authority is received, it may reject all bids. The authority may fix the terms and

conditions under which each sale of bonds may be held; provided, that such terms and conditions shall not conflict with any of the requirements of this article. Subject to the provisions and limitations contained in this article, the authority may from time to time sell and issue refunding bonds for the purpose of refunding any matured or unmatured bonds of the authority then outstanding. Such refunding bonds shall be subrogated and entitled to all priorities, rights and pledges to which the bonds refunded thereby were entitled. The authority may pay out of the proceeds of the sale of its bonds attorneys' fees and the expenses of issuance which the board of directors may deem necessary and advantageous in connection with the issuance of such bonds. Bonds issued by the authority shall not be general obligations of the authority but shall be payable solely out of the funds appropriated and pledged thereof in Section 41-29-506 hereof. As security for the payment of the principal of and interest on the bonds issued by it, the authority is hereby authorized and empowered to pledge for payment of such principal and interest the funds that are appropriated and pledged in Section 41-29-506 hereof for payment of such principal and interest. All such pledges made by the authority shall take precedence in the order of the adoption of the resolutions containing such pledges; provided, that each pledge for the benefit of refunding bonds shall have the same priority as the pledge for the benefit of the bonds refunded thereby. All contracts made and all bonds issued by the authority pursuant to the provisions of this article shall be solely and exclusively obligations of the authority and shall not constitute or, create an obligation or debt of the State of Alabama. All bonds issued by the authority and the income therefrom shall be exempt from all taxation in the state. Any bonds issued by the authority may be used by the holder thereof as security for any funds belonging to the state, or to any political subdivision, instrumentality of agency of the state, in any instance where security for such deposits may be required by law. Unless otherwise directed by the court having jurisdiction thereof, or the document that is the source of authority, a trustee, executor, administrator, guardian, or one acting in any other fiduciary capacity may, in addition to any other investment powers conferred by law and with the exercise of reasonable business prudence, invest trust funds in bonds of the authority. Neither a public hearing nor consent of the department of finance of the state or any other department or agency shall be a prerequisite to the issuance of the bonds by the authority. The bonds issued under the provisions of this article shall be legal investments for funds of the Teachers' Retirement System of Alabama, the Employees' Retirement System of Alabama, and the State Insurance Fund.

Section 41-29-505.

- (a) The proceeds of all bonds, other than refunding bonds, issued by the authority remaining after paying expenses of their issuance, shall be deposited in the state treasury and shall be carried in the state treasury in a special or separate account or accounts. Such funds shall be subject to be drawn upon by the authority, but any funds so withdrawn shall be used solely for the purposes for which the bonds were issued as authorized in this article.
- (b) The state treasurer, with the approval of the secretary of the authority, shall invest funds not needed by the authority within the ensuing thirty days for any purpose for which they are held, which investments shall be made in the manner authorized and provided for in Section 36-17-18. The state treasurer and the authority may apply so much as may be necessary from the earnings on said investments toward satisfaction of the arbitrage rebate requirements under the Internal Revenue Code of 1986, as amended.
- (c) The proceeds from the sale of any refunding bonds issued hereunder remaining after paying the expenses of their issuance shall be used only for the purpose of refunding the principal of outstanding bonds of the authority and of paying any premium that may be necessary to be paid in order to redeem or retire the bonds to be refunded.

Section 41-29-506.

For the purpose of providing funds to enable the authority to pay at their respective maturities the principal of and interest on any bonds issued by it under the provisions of this article and to accomplish the objects of this

article, there are hereby irrevocably pledged to such purpose and there are hereby appropriated so much as may be necessary for such purpose of: (a) the residue of the receipts from the tax levied by Sections 40-25-2 and 40-25-41 after there shall have been taken therefrom the amount necessary for the purposes specified in Section 40-25-23(1)b.1., as in existence prior to the effective date of Act 91-635; and (b) any other revenues or receipts dedicated to the payment of bonds of the authority, issued by it under the provisions of Act 91-635 or any subsequent authorizing legislation. All moneys hereby appropriated and pledged shall constitute a sinking fund for the purpose of paying the principal of and the interest on the bonds herein authorized.

Section 41-29-507.

Out of the revenues appropriated and pledged in Section 41-29-506 hereof, the state treasurer is hereby authorized and directed to pay the principal of and interest on the bonds issued by the authority under the provisions of this article, as the said principal and interest shall respectively mature, and the state treasurer is further authorized and directed to set up and maintain appropriate records pertaining thereto.

Section 4. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 5. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

Economic Development

Commerce Department

Industrial Development Authority

Authorities

Bonds

Popular Names

Code Added

Code Amended