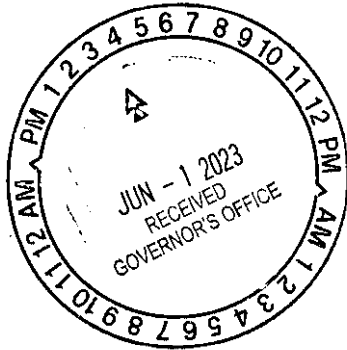




ACT #2023 - 419

1 MSFCHW-3
2 By Representatives Brown, Stringer, Lipscomb, Marques, Givens,
3 Holk-Jones, Clarke, Kirkland, Travis, Starnes, Jones, Hassell,
4 Shirey, Hulsey, Collins, Pringle, Drummond, Bracy, Wilcox,
5 Lomax
6 RFD: Ways and Means Education
7 First Read: 11-Apr-23
8 2023 Regular Session





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1 Enrolled, An Act,

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4 Relating to port credits; to amend Sections 40-18-401
5 and 40-18-403, Code of Alabama 1975, to expand the cap of the
6 port credit and to expand tax incentives for businesses and
7 enterprises who increase their cargo volume through Alabama
8 public ports.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 40-18-401 and 40-18-403, Code of
11 Alabama 1975, are amended to read as follows:

12 "§40-18-401

13 (a) The port credit provided for in Section 40-18-403
14 is created by this article and is allowed upon strict
15 compliance with the provisions herein.

16 (b) Prior to the allowance of the port credit, an
17 application shall be filed with the commission, on a form
18 promulgated by the commission.

19 (1) The application shall be filed by the port facility
20 user desiring to claim the credit.

21 (2) The commission shall establish deadlines for
22 applications. Such applications shall solicit whatever
23 information the commission deems important to its
24 determination of whether granting a port credit will create
25 new, high paying jobs in the state, bring substantial capital
26 to the state, increase the usage of a port facility, promote
27 the development of clusters of businesses in the state, or
28 promote the economic development efforts of the state.

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29 (3) Upon review of the applications, the commission may
30 approve such applications as shall result in port credits
31 being awarded so as not to exceed twelve million dollars
32 (\$12,000,000) ~~twenty million dollars (\$20,000,000)~~ for the
33 life of the program, and shall not exceed five million dollars
34 (\$5,000,000) in a fiscal year.

35 (4) The commission shall charge application fees to
36 offset the costs of administration of this article.

37 (c) Prior to claiming a port credit, the company shall
38 submit to the Department of Commerce a certification
39 containing information adequate to prove that the company is
40 entitled to the credit. Following such examination as it deems
41 necessary, the Department of Commerce may certify the
42 information and deliver the same to the Department of Revenue.
43 Thereafter, the Department of Revenue shall allow the tax
44 credit.

45 (d) (1) Nothing in this article shall be construed to
46 constitute a guarantee or assumption by the state of any debt
47 of any company nor to authorize the credit of the state to be
48 given, pledged, or loaned to any company.

49 (2) Nothing in this article shall be construed to make
50 available to any company any right to the benefits conferred
51 by this article absent strict compliance with this article.

52 (3) Nothing in this article shall be construed to
53 change or lessen the requirements for claiming jobs act
54 incentives under the Alabama Jobs Act, Section 40-18-370, et
55 seq. Companies claiming the jobs act incentives must strictly
56 comply with the Alabama Jobs Act.



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57 (4) All filings made by a private party with the
58 commission or any department of state government shall be made
59 using forms adopted by the commission or department. Any such
60 filing shall be treated as a tax return, subject to penalties
61 imposed by the Department of Revenue.

62 (5) Nothing in this article shall be construed to limit
63 the powers otherwise existing for the Department of Revenue to
64 audit and assess any company claiming a port credit."

65 "\$40-18-403

66 (a) If approved by the commission, a port credit is
67 allowed, in an amount equal to ~~fifty dollars (\$50) per TEU,~~
68 ~~three dollars (\$3) per net ton, four cents (\$0.04) per~~
69 ~~kilogram for air freight, or two dollars and ninety-one cents~~
70 ~~(\$2.91) per VEU, multiplied by the following the cargo volume~~
71 ~~calculated from subdivisions (1) and (2) as follows multiplied~~
72 ~~by the appropriate amount shown in the table in subsection~~

73 (b):

74 (1) The port user's cargo volume in the 12-month period
75 for which the commission has granted approval for the port
76 user to claim the port credit, minus

77 (2) The port user's base cargo volume.

78 (b) Port credit amount.

79 80 81 82 83 84 85	<u>Increase in</u> <u>cargo volume</u> <u>over base</u> <u>cargo volume</u>	<u>TEU</u>	<u>Net Ton</u>	<u>Kilogram</u> <u>for Air</u> <u>Freight</u>	<u>VEU</u>
86 87 88	<u>under 4.99</u> <u>percent</u>	<u>\$50</u>	<u>\$3</u>	<u>\$0.04</u>	<u>\$2.91</u>



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<u>5 to 14.99</u> percent	<u>\$75</u>	<u>\$4.5</u>	<u>\$0.06</u>	<u>\$4.37</u>
<u>15 to 24.99</u> percent	<u>\$100</u>	<u>\$6</u>	<u>\$0.08</u>	<u>\$5.82</u>
<u>25 percent</u> or greater	<u>\$125</u>	<u>\$7.5</u>	<u>\$0.1</u>	<u>\$7.28</u>

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(c) The commission shall decrease the amount of the port credit to ensure that the anticipated revenues for the port facility and state will exceed the amount of the port credit sought. The port credit may be conditioned on whatever requirements, the commission shall impose. The port credits shall only be available to the extent that a port facility user ships more than 105 percent of its cargo volume from the 12-month period immediately preceding the port facility user's application. Moreover, the port credit shall only be available to the extent a port facility user ships more than 10 TEUs, for cargo measured by TEU, more than 75 net tons, for cargo measured by net ton, more than fifteen thousand (15,000) kilograms for air cargo measured by kilograms, or more than 400 VEUs, for cargo measured by VEU.

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~~(e)~~(d) The following methods may be used to realize the port credit:

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(1) The port credit may offset the tax levied by this chapter, but not below zero. The port credit may also offset the estimated payments of the tax levied by this chapter, but not below zero. In no event shall the port credits be allowed to reduce any estimated payment of the tax levied by this chapter before October 1, 2016. In any one year, if the port



120 credit exceeds the amount of tax liability, the port user may
121 carry forward the unused port credit. No carryforward shall be
122 allowed for more than five years. Rules similar to those used
123 for Section 40-18-15.2 shall be applied.

124 (2) A company may assign and convey a port credit to
125 another company if substantially all of the assets of the
126 company are assigned and conveyed in the same transaction.
127 Proof of such transfer shall be submitted to the Department of
128 Revenue.

129 (e) To the extent that the port credit is utilized by
130 the port user or by a transferee company, no deduction for the
131 related expenses shall be allowed.

132 (f) For any company which enters into an economic
133 development project agreement with the state, the project
134 agreement may provide for an allocation to the company of any
135 port credits which have not been allocated pursuant to this
136 article. Allocations made pursuant to this subsection shall
137 meet all of the following requirements:

138 (1) Allocations shall be made by the Governor and
139 approved by the commission.

140 (2) Allocations for a project shall not exceed three
141 million dollars (\$3,000,000).

142 (3) Allocations shall be granted only to a new
143 warehouse or distribution facility which commits to investing
144 at least twenty million dollars (\$20,000,000) at a single site
145 and to creating 75 net new jobs in Alabama.

146 (4) Port credits may not be used until the Department
147 of Commerce has received satisfactory proof that the capital

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148 investment and job creation requirements have been satisfied.

149 (5) Any port credit granted by this procedure shall not
150 be granted for more than a 3-year period.

151 (6) Allocations shall not exceed the per unit amounts
152 stated in subsection (b) ~~one hundred dollars (\$100) per TEU,~~
153 ~~three dollars (\$3) per net ton, four cents (\$0.04) per~~
154 ~~kilogram for air freight, or two dollars and ninety one cents~~
155 ~~(\$2.91) per VEU.~~

156 (7) Anticipated revenues for the state shall exceed the
157 port credit granted, and the project agreement shall provide
158 for recapture of all or part of the port credit should the
159 company default on its obligations in the project agreement."

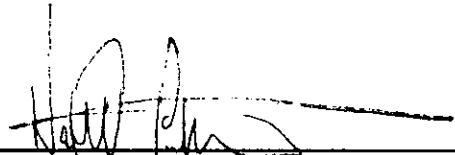
160 Section 2. The provisions of this act shall be
161 effective for all tax years beginning after December 31, 2023.

162 Section 3. This act shall become effective January 1,
163 2024, following its passage and approval by the Governor, or
164 its otherwise becoming law.



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Speaker of the House of Representatives




President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 17-May-23, as amended.

John Treadwell
Clerk

Senate 01-Jun-23 Passed

APPROVED 6-8-2023
TIME 10:15 AM


GOVERNOR

Alabama Secretary Of State
Act Num....: 2023-419
Bill Num...: H-293

Recv'd 06/08/23 10:55amSLF

Brown

CO-SPONSORS

- Stringer
- Lipscomb
- Margues
- Givens
- Holk-Jones
- Clarke
- Kirkland
- Travis
- Starnes
- Jones
- Hassell
- Shirey
- Hulsey
- Collins
- Pringle
- Drummond
- Braey
- Wilcox
- Comax

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 293

YEAS 102 NAYS 0

JOHN TREADWELL, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. _____ AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JOHN TREADWELL, Clerk

CONFERENCE COMMITTEE

House Conferees _____

DATE: 5-18 2022

RD 1 RFD FATE

This Bill was referred to the Standing Committee of the Senate on FATE

and was acted upon by such Committee session and is by order of the Committee returned therefrom with a favorable report/w/amend(s) _____ w/sub _____ by a vote

years 14 days 0 abstain 0

this 31st day of May 2023

FATE, Chair

DATE: 5-31 2022

RF FATE RD 2 C

DATE: _____ 20____

RE-REFERRED RE-COMMITTED

Committee _____

I hereby certify that the Resolution a required in Section C of Act No. 81-88 was adopted and is attached to the Bill

HB _____

YEAS _____ NAYS _____

PATRICK HARRIS
Secretary

FURTHER SENATE ACTION (OVER)