The House Committee on Ways and Means offers the following substitute to HB 984:

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, and computation of income taxes, so as to change certain provisions regarding the designation of counties as less developed areas for purposes of certain income tax credits; to provide for such designation with respect to portions of certain counties; to provide for such designation with respect to tax credits for existing manufacturing and telecommunications facilities or manufacturing or telecommunications support facilities; to provide for such designation with respect to optional tax credits for existing manufacturing or telecommunications facilities or manufacturing or telecommunications support facilities; to provide for such designation with respect to tax credits for establishing or relocating headquarters; to provide for such designation with respect to tax credits for certain business enterprises for leased motor vehicles; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, and computation of income taxes, is amended by striking Code Section 48-7-40, relating to designation of counties as less developed areas, and inserting in its place a new Code Section 48-7-40 to read as follows:

"48-7-40.

(a) As used in this Code section, the term 'business enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, tourism, and research and development industries. Such term shall not include retail businesses.

(b)(1) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas all

~~159~~ counties in this state, or portions thereof, using a combination of the following equally weighted factors:

(A) Highest unemployment rate for the most recent 36 month period;

(B) Lowest per capita income for the most recent 36 month period; and

(C) Highest percentage of residents whose incomes are below the poverty level according to the most recent data available.

Each county in this state shall constitute a single area for purposes of applying the factors enumerated in this paragraph, unless a county is comprised of one or more census tracts adjacent to a federal military installation where pervasive poverty is evidenced by a 15 percent poverty rate as reflected in the most recent decennial census. In such case, each such area of the county comprised of those census tracts shall constitute a separate area for purposes of applying the factors enumerated in this paragraph.

(2) Counties or portions thereof ranked and designated as the first through seventy-first least developed ~~counties~~ areas shall be classified as tier 1, counties or portions thereof ranked and designated as the seventy-second through one hundred sixth least developed ~~counties~~ areas shall be classified as tier 2, counties or portions thereof ranked and designated as the one hundred seventh through one hundred forty-first least developed ~~counties~~ areas shall be classified as tier 3, and ~~counties~~ the remaining counties or portions thereof shall be sequentially ranked and designated ~~as the one hundred forty-second through one hundred fifty-ninth least developed counties~~ and shall be classified as tier 4.

(c) The commissioner of community affairs shall be authorized to include in the tier 2 designation provided for in subsection (b) of this Code section any tier 3 ~~county~~ area which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such ~~county~~ area. No designation made pursuant to this subsection shall operate to displace or remove any other ~~county~~ area previously designated as a tier 2 ~~county~~ area.

(c.1) The commissioner of community affairs shall be authorized to include in the tier 1 designation provided for in subsection (b) of this Code section any tier 2 ~~county~~ area which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such ~~county~~ area. No designation made pursuant to this subsection shall operate to displace or remove any other ~~county~~ area previously designated as a tier 1 ~~county~~ area.

(d) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall prescribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular county or portion thereof is reclassified in a different tier.

(e) Business enterprises in counties or portions thereof designated by the commissioner of community affairs as tier 1 ~~counties~~ areas shall be allowed a tax credit for taxes imposed under this article equal to $3,500.00 annually per eligible new full-time employee job for five years beginning with years two through six after the creation of such job; provided, however, that where the amount of such credit exceeds a business enterprise´s liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise´s quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year $3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise´s quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer. Business enterprises in counties or portions thereof designated by the commissioner of community affairs as tier 2 ~~counties~~ areas shall be allowed a job tax credit for taxes imposed under this article equal to $2,500.00 annually, business enterprises in counties or portions thereof designated by the commissioner of community affairs as tier 3 ~~counties~~ areas shall be allowed a job tax credit for taxes imposed under this article equal to $1,250.00 annually, and business enterprises in counties or portions thereof designated by the commissioner of community affairs as tier 4 ~~counties~~ areas shall be allowed a job tax credit for taxes imposed under this article equal to $750.00 annually for each new full-time employee job for five years beginning with years two through six after the creation of the job. The number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 ~~counties~~ areas, those business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 ~~counties~~ areas, only those business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 ~~counties~~ areas, only those business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 ~~counties~~ areas, only those business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the ~~county~~ area that has the lowest average wage of any ~~county~~ area in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this subsection, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this subsection shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this subsection if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit received for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier.

(f) Tax credits for five years for the taxes imposed under this article shall be awarded for additional new full-time jobs created by business enterprises qualified under subsection (b), (c), or (c.1) of this Code section. Additional new full-time jobs shall be determined by subtracting the highest total employment of the business enterprise during years two through six, or whatever portion of years two through six which has been completed, from the total increased employment. The state revenue commissioner shall adjust the credit allowed in the event of employment fluctuations during the additional five years of credit.

(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(h) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, but in tiers 3 and 4 the credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer´s state income tax liability which is attributable to income derived from operations in this state for that taxable year. In tier 1 and 2 ~~counties~~ areas, the credit allowed under this Code section against taxes imposed under this article in any taxable year shall be limited to an amount not greater than 100 percent of the taxpayer´s state income tax liability attributable to income derived from operations in this state for such taxable year.

(i) Notwithstanding any provision of this Code section to the contrary, in counties or portions thereof recognized and designated as the first through fortieth least developed ~~counties~~ areas in the tier 1 designation, job tax credits shall be allowed as provided in this Code section, in addition to business enterprises, to any business of any nature.

(j) The commissioner may require such reports, promulgate such regulations, and gather such relevant data necessary and advisable for the evaluation of the job tax credits established by this Code section.″

SECTION 2.

Said article is further amended by striking subsection (c) of Code Section 48-7-40.1, relating to additional tax credits in less developed areas, and inserting in its place a new subsection (c) to read as follows:

″(c) The commissioner of community affairs shall be authorized to include in the designation provided for in subsection (b) of this Code section:

(1) Any area comprised of ten or more contiguous census tracts which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such area; ~~or~~

(2) Any area comprised of one or more census tracts adjacent to a federal military installation where pervasive poverty is evidenced by a 15 percent poverty rate as reflected in the most recent decennial census; or

~~(2)~~(3) Any area comprised of one or more contiguous census tracts which, in the opinion of the commissioner of community affairs, is or will be adversely impacted by the loss of one or more jobs, businesses, or residences as a result of an airport expansion, including noise buy-outs, or the closing of a business enterprise which, in the opinion of the commissioner of community affairs, results or will result in a sudden and severe period of economic distress.

No designation made pursuant to this subsection shall operate to displace or remove any other area previously designated as a less developed area.″

SECTION 3.

Said article is further amended by striking subsection (b) of Code Section 48-7-40.2, relating to tax credits for existing manufacturing and telecommunications facilities or manufacturing or telecommunications support facilities in tier 1 counties, and inserting in its place a new subsection (b) to read as follows:

″(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility in this state in a tier 1 ~~county~~ area designated pursuant to Code Section 48-7-40, there shall be allowed a credit against the tax imposed under this article in an amount equal to 5 percent of the cost of all qualified investment property purchased or acquired by the taxpayer in such year, subject to the conditions and limitations set forth in this Code section. In the event such qualified investment property purchased or acquired by the taxpayer in such year consists of recycling machinery or equipment, a recycling manufacturing facility, pollution control or prevention machinery or equipment, a pollution control or prevention facility, or the conversion from defense to domestic production, the amount of such credit shall be equal to 8 percent.″

SECTION 4.

Said article is further amended by striking subsection (b) of Code Section 48-7-40.3, relating to tax credits for existing manufacturing and telecommunications facilities or manufacturing or telecommunications support facilities in tier 2 counties, and inserting in its place a new subsection (b) to read as follows:

″(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility in this state in a tier 2 ~~county~~ area designated pursuant to Code Section 48-7-40, there shall be allowed a credit against the tax imposed under this article in an amount equal to 3 percent of the cost of all qualified investment property purchased or acquired by the taxpayer in such year, subject to the conditions and limitations set forth in this Code section. In the event such qualified investment property purchased or acquired by the taxpayer in such year consists of recycling machinery or equipment, a recycling manufacturing facility, pollution control or prevention machinery or equipment, a pollution control or prevention facility, or the conversion from defense to domestic production, the amount of such credit shall be equal to 5 percent.″

SECTION 5.

Said article is further amended by striking subsection (b) of Code Section 48-7-40.4, relating to tax credits for existing manufacturing and telecommunications facilities or manufacturing or telecommunications support facilities in tier 3 or 4 counties, and inserting in its place a new subsection (b) to read as follows:

″(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility in this state in a tier 3 or a tier 4 ~~county~~ area designated pursuant to Code Section 48-7-40, there shall be allowed a credit against the tax imposed under this article in an amount equal to 1 percent of the cost of all qualified investment property purchased or acquired by the taxpayer in such year, subject to the conditions and limitations set forth in this Code section. In the event such qualified investment property purchased or acquired by the taxpayer in such year consists of recycling machinery or equipment, a recycling manufacturing facility, pollution control or prevention machinery or equipment, a pollution control or prevention facility, or the conversion from defense to domestic production, the amount of such credit shall be equal to 3 percent.″

SECTION 6.

Said article is further amended by striking subsection (b) of Code Section 48-7-40.7, relating to optional tax credits for existing manufacturing or telecommunications facilities or manufacturing or telecommunications support facilities in tier 1 counties, and inserting in its place a new subsection (b) to read as follows:

″(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 1 ~~county~~ area designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.2. No taxpayer who claims the credit under Code Section 48-7-40.2 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 10 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the tenth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.″

SECTION 7.

Said article is further amended by striking subsection (b) of Code Section 48-7-40.8, relating to optional tax credits for existing manufacturing or telecommunications facilities or manufacturing or telecommunications support facilities in tier 2 counties, and inserting in its place a new subsection (b) to read as follows:

″(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 2 ~~county~~ area designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.3. No taxpayer who claims the credit under Code Section 48-7-40.3 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 8 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the tenth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.″

SECTION 8.

Said article is further amended by striking subsection (b) of Code Section 48-7-40.9, relating to optional tax credits for existing manufacturing or telecommunications facilities or manufacturing or telecommunications support facilities in tier 3 or 4 counties, and inserting in its place a new subsection (b) to read as follows:

″(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 3 or a tier 4 ~~county~~ area designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.4. No taxpayer who claims the credit under Code Section 48-7-40.4 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 6 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the tenth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.″

SECTION 9.

Said article is further amended by striking paragraph (2) of subsection (a) of Code Section 48-7-40.17, relating to tax credits for establishing or relocating headquarters, and inserting in its place a new paragraph (2) to read as follows:

″(2) 'Full-time job' means employment for an individual which:

(A) Is located at a headquarters;

(B) Has a regular work week of 30 hours or more;

(C) Pays at or above:

(i) In tier 1 ~~counties~~ areas, the average wage of the ~~county~~ area in which it is located;

(ii) In tier 2 ~~counties~~ areas, 105 percent of the average wage of the ~~county~~ area in which it is located;

(iii) In tier 3 ~~counties~~ areas, 110 percent of the average wage of the ~~county~~ area in which it is located; and

(iv) In tier 4 ~~counties~~ areas, 115 percent of the average wage of the ~~county~~ area in which it is located; and

(D) Has no predetermined end date.″

SECTION 10.

Said article is further amended by striking subsection (b) of Code Section 48-7-40.22, relating to tax credits for business enterprises for leased motor vehicles, and inserting in its place a new subsection (b) to read as follows:

″(b) A business enterprise which is located in a tier 1 or tier 2 ~~county~~ area which purchases or leases a new motor vehicle as defined in paragraph (34) of Code Section 40-1-1 in this state which is used for the exclusive purpose of providing transportation for its employees shall be allowed a credit for taxes imposed under this article as follows:

Tier	Credit amount per vehicle
1	$ 3,000.00

2 . . . . 2,000.00″

SECTION 11.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and apply to all taxable years beginning on or after January 1, 2004.

SECTION 12.

All laws and parts of laws in conflict with this Act are repealed.