

SENATE SUBSTITUTE #2 TO HB 984:

ADOPTED

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 authorize the addition to the job tax credit program of areas where there is a poverty rate of 20 percent or greater in an enterprise zone, a redevelopment plan has been adopted, and the commissioner of community affairs finds pervasive poverty, underdevelopment, general distress, and blight; to provide that, in areas suffering from pervasive poverty, job tax credits shall be allowed to any lawful business; to remove the requirement that 30 percent of the new full-time jobs must be held by a resident of the affected area or similar area; to increase the allowable amount of tax credits that can be claimed in a tax year from 50 percent to 100 percent of the taxpayer's state income tax liability; to amend Chapter 88 of Title 36 of the Official Code of Georgia Annotated, relating to the "Enterprise Zone Employment Act of 1997," so as to update references to federal law and census data; to provide a definition; to modify and add additional criteria for enterprise zones; to provide a limit on certain tax exemptions; 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 48-7-40.1, relating to additional tax credits in less developed areas, and inserting in its place a new Code Section 48-7-40.1 to read as follows:

"48-7-40.1.

(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

1 distribution, processing, telecommunications, tourism, and research and development
2 industries. Such term shall not include retail businesses.

3 (b) Not later than December 31 of each year, using the most current data available from
4 the Department of Labor and the United States Department of Commerce, the
5 commissioner of community affairs shall rank and designate as less developed areas the
6 areas which are comprised of ten or more contiguous census tracts in this state using a
7 combination of the following equally weighted factors:

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

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

10 (3) Highest percentage of residents whose income is below the poverty level according
11 to the most recent data available.

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

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

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

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

27 (4) Any area comprised of two or more contiguous census block groups with a poverty
28 rate of 20 percent or greater as determined from data in the most current United States
29 decennial census, where the area is also included within a state enterprise zone pursuant
30 to Chapter 88 of Title 36, where a redevelopment plan has been adopted pursuant to
31 Chapter 61 of Title 36, and which, in the opinion of the commissioner of community
32 affairs, displays pervasive poverty, underdevelopment, general distress, and blight.

33 No designation made pursuant to this subsection shall operate to displace or remove any
34 other area previously designated as a less developed area. Notwithstanding any provision
35 of this Code section to the contrary, in areas designated as suffering from pervasive poverty
36 under this paragraph, job tax credits shall be allowed as provided in this Code section, in
37 addition to business enterprises, to any lawful business.

1 (d) For business enterprises which plan a significant expansion in their labor forces, the
2 commissioner of community affairs shall prescribe redesignation procedures to ensure that
3 the business enterprises can claim credits in future years without regard to whether or not
4 a particular area is removed from the list of less developed areas.

5 (e) Business enterprises in areas designated by the commissioner of community affairs as
6 less developed areas shall be allowed a job tax credit for taxes imposed under this article
7 equal to \$3,500.00 annually per eligible new full-time employee job for five years
8 beginning with years two through six after the creation of such job; provided, however, that
9 where the amount of such credit exceeds a business enterprise's liability for such taxes in
10 a taxable year, the excess may be taken as a credit against such business enterprise's
11 quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one
12 taxable year \$3,500.00 for each new full-time employee job when aggregated with the
13 credit applied against taxes under this article. Each employee whose employer receives
14 credit against such business enterprise's quarterly or monthly payment under Code Section
15 48-7-103 shall receive credit against his or her income tax liability under Code Section
16 48-7-20 for the corresponding taxable year for the full amount which would be credited
17 against such liability prior to the application of the credit provided for in this subsection.
18 Credits against quarterly or monthly payments under Code Section 48-7-103 and credits
19 against liability under Code Section 48-7-20 established by this subsection shall not
20 constitute income to the taxpayer. The number of new full-time jobs shall be determined
21 by comparing the monthly average number of full-time employees subject to Georgia
22 income tax withholding for the taxable year with the corresponding period of the prior
23 taxable year. Only those business enterprises that increase employment by five or more
24 in a less developed area shall be eligible for the credit. The average wage of the new jobs
25 created must be above the average wage of the county that has the lowest wage of any
26 county in the state to qualify as reported in the most recently available annual issue of the
27 Georgia Employment and Wages Averages Report of the Department of Labor. To qualify
28 for a credit under this subsection, the employer must make health insurance coverage
29 available to the employee filling the new full-time job; provided, however, that nothing in
30 this subsection shall be construed to require the employer to pay for all or any part of health
31 insurance coverage for such an employee in order to claim the credit provided for in this
32 subsection if such employer does not pay for all or any part of health insurance coverage
33 for other employees. ~~In addition, not less than 30 percent of such new full-time jobs must~~
34 ~~be held by a resident of the less developed area for which the credit is sought or another~~
35 ~~such designated less developed area.~~ Credit shall not be allowed during a year if the net
36 employment increase falls below five. Any credit received for years prior to the year in
37 which the net employment increase falls below five 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 five.

(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) or (c) 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 the credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than ~~50~~ 100 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year."

SECTION 2.

Chapter 88 of Title 36 of the Official Code of Georgia Annotated, relating to the "Enterprise Zone Employment Act of 1997," is amended by striking subparagraph (E) of paragraph (6) of Code Section 36-88-3, relating to definitions, and inserting in lieu thereof a new subparagraph (E) to read as follows:

"(E) A participant in the ~~Job Training Partnership~~ Workforce Investment Act or who has participated in the ~~Job Training Partnership~~ Workforce Investment Act at any time during the 18 months previous to the date of hire;".

SECTION 3.

Said chapter is further amended by adding a new paragraph (10) to Code Section 36-88-3, relating to definitions, to read as follows:

"(10) 'Urban redevelopment plan' means a plan prepared and adopted pursuant to the requirements of Chapter 61 of this title."

SECTION 4.

Said chapter is further amended by striking Code Section 36-88-6, relating to criteria for an enterprise zone, and inserting in lieu thereof a new Code Section 36-88-6 to read as follows:

"36-88-6.

(a) In order to be designated as an enterprise zone, a nominated area shall meet either at least three of the ~~four~~ five criteria specified in subsections (b), (c), (d), (e), and ~~(e)~~ (f) of this Code section or the criterion specified in subsection (g) of this Code section. In determining whether an area suffers from poverty, unemployment, or general distress, the governing body shall use data from the most current United States decennial census and from other information published by the Federal Bureau of the Census, the Federal Bureau of Labor Statistics, and the Georgia Department of Labor. In determining whether an area suffers from underdevelopment, the governing body shall use the data specified in subsection (e) of this Code section. The data shall be comparable in point or period of time and methodology employed.

(b) Pervasive poverty shall be evidenced by showing that poverty is widespread throughout the nominated area and shall be established by using the following criteria:

(1) The poverty rate shall be determined from the data in ~~Table P121 contained in Census of Population and Housing, 1990: Summary Tape File 3A, on CD-ROM (Georgia)~~, the most current United States decennial census prepared by the U.S. Bureau of Census (~~1992~~);

(2) For each census geographic block group within the nominated area, the ratio of income to poverty level for at least 20 percent of the residents shall be less than 1.0;

~~(3) In at least 50 percent of the census geographic block groups within the nominated area, the ratio of income to poverty level for at least 30 percent of the residents shall be less than 1.0;~~

~~(4)~~(3) Census geographic block groups with no population shall be treated as having a poverty rate which meets the standards of paragraph (2) of this subsection ~~but shall be treated as having a zero poverty rate for the purpose of applying paragraph (3) of this subsection~~; and

~~(5)~~(4) All parcels of a nominated area must abut and may not contain a noncontiguous parcel, unless such nonabutting parcel qualifies separately under the criteria set forth under ~~paragraphs~~ paragraph (2) ~~and (3)~~ of this subsection.

(c) Unemployment shall be evidenced by the use of data published by the Office of Labor Information Systems of the Georgia Department of Labor indicating that the average rate of unemployment for the nominated area for the preceding calendar year is at least 10 percent higher than the state average rate of unemployment or by evidence of adverse

economic conditions brought about by significant job dislocation within the nominated area such as the closing of a manufacturing plant or federal facility.

(d) General distress shall be evidenced by adverse conditions within the nominated area other than those of pervasive poverty and unemployment. Examples of such adverse conditions include, but are not limited to, a high incidence of crime, abandoned or dilapidated structures, deteriorated infrastructure, and substantial population decline.

(e) Underdevelopment shall be evidenced by data indicating development activities, or lack thereof, through land disturbance permits, business license fees, building permits, development fees, or other similar data indicating that the level of development in the nominated area is ~~at least 20 percent~~ lower than development activity within the local governing body's jurisdiction.

(f) General blight within the nominated area shall be evidenced by the inclusion of any portion of the nominated area in an urban redevelopment area as defined by paragraph (20) of Code Section 36-61-2 for which an urban redevelopment plan has been adopted by the affected governing bodies according to the requirements of Chapter 61 of this title.

(g) Notwithstanding any other provision of subsections (a) through (f) of this Code section, a nominated area may be designated as an enterprise zone if it is located within a county designated as a tier 1 county under the job tax credit program as provided for in Code Section 48-7-40."

SECTION 5.

Said chapter is further amended by striking paragraph (1) of subsection (a) of Code Section 36-88-8, relating to tax exemptions, and inserting in lieu thereof a new paragraph (1) to read as follows:

"(a)(1) The governing body of a local government or governments creating an enterprise zone shall include in the creating ordinance a provision to exempt qualifying business and service enterprises from state, county, and municipal ad valorem taxes that would otherwise be levied on the qualifying business and service enterprises ~~in accordance with~~ not to exceed the following schedule:

- (A) One hundred percent of the property taxes shall be exempt for the first five years;
- (B) Eighty percent of the property taxes shall be exempt for the next two years;
- (C) Sixty percent of the property taxes shall be exempt for the next year;
- (D) Forty percent of the property taxes shall be exempt for the next year; and
- (E) Twenty percent of the property taxes shall be exempt for the last year."

SECTION 6.

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 7.

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