House Bill 389 (AS PASSED HOUSE AND SENATE)

By: Representatives Roberts of the 154th, Smith of the 129th, Golick of the 34th, Smith of the 131st, Burns of the 157th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 48-7-40 of the Official Code of Georgia Annotated, relating to designation of counties as less developed areas for the purpose of tax credits with respect to certain business enterprises, so as to provide a definition; to provide for an additional tax credit for certain existing business enterprises; to provide for procedures, conditions, and limitations; to provide for powers, duties, and authority of the state revenue commissioner; 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.

Code Section 48-7-40 of the Official Code of Georgia Annotated, relating to designation of counties as less developed areas for the purpose of tax credits with respect to certain business enterprises, is amended by striking subsections (a), (e), (h), and (i) and inserting in lieu thereof new subsections (a), (e), (h), and (i), respectively, to read as follows:

"(a) As used in this Code section, the term:

(1) '~~business~~ 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.

(2) 'Existing business enterprise' means any business or the headquarters of any such business which has operated for the immediately preceding three years a facility in this state which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, tourism, or research and development industries. Such term shall not include retail businesses."

"(e)(1) Business enterprises in counties designated by the commissioner of community affairs as tier 1 counties 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~~ paragraph. 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~~ paragraph shall not constitute income to the taxpayer. Business enterprises in counties designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under this article equal to $2,500.00 annually, business enterprises in counties designated by the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under this article equal to $1,250.00 annually, and business enterprises in counties designated by the commissioner of community affairs as tier 4 counties 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, those business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, 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 that has the lowest average wage of any county 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~~ paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this ~~subsection~~ paragraph 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~~ paragraph 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.

(2) Existing business enterprises as defined under paragraph (2) of subsection (a) of this Code section shall be allowed an additional tax credit for taxes imposed under this article equal to $500.00 per eligible new full-time employee job for one year after the creation of such job. The additional credit shall be claimed in year two after the creation of such 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, those existing business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those existing business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those existing business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those existing 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 that has the lowest average wage of any county 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 paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this paragraph 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 paragraph 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. This paragraph shall apply only to new eligible full-time jobs created in taxable years beginning on or after January 1, 2006, and ending no later than taxable years beginning prior to January 1, 2011.″

"(h)(1) ~~Any~~ Except as provided in paragraph (2) of this subsection, 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, 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.

(2) The additional credit claimed by an existing business enterprise pursuant to the provisions of paragraph (2) of subsection (e) of this Code section must be applied against taxes imposed for the taxable year in which such credit is available and may not be carried forward to any subsequent taxable year.

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

SECTION 2.

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, 2006.

SECTION 3.

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