

The Senate Finance Committee offered the following substitute to HB 1196:

A BILL TO BE ENTITLED  
AN ACT

1 To establish the "Georgia Science Education and Employment Development Act of 2008";  
2 to amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and  
3 taxation, so as to provide a definition for life sciences applicable to taxation; to prohibit  
4 duplicate taxation of certain venture capital revenues that pass through payments and credits  
5 to nonresidents and that discourage venture capital investment companies from locating in  
6 this state; to provide that Georgia taxable net income of certain taxpayers shall not include  
7 income which is attributable directly to a life sciences business of any taxpayer which has  
8 been relocated from another state for the first 12 months; to provide for an exemption for  
9 certain educational grants, scholarships, gifts, or awards; to provide for an income tax credit  
10 for qualified investments in research and development conducted in Georgia; to establish the  
11 "Georgia Research and Development Tax Credit"; to provide for a short title; to provide for  
12 legislative findings and intent; to provide for definitions; to provide for conditions and  
13 limitations; to provide for powers, duties, and authority of the state revenue commissioner  
14 with respect to the foregoing; to provide for an income tax credit for the sale of biomass  
15 materials and alternative fuels grown or produced in Georgia; to provide for conditions and  
16 limitations; to provide for a tax credit for certain employers who employ students; to provide  
17 for conditions and procedures regarding such tax credit; to exempt life sciences businesses  
18 and corporations transferring to Georgia for the first 12 months; to provide for conditions and  
19 limitations; to provide for certain tax credits; to amend Chapter 10 of Title 10 of the Official  
20 Code of Georgia Annotated, relating to the Seed-Capital Fund, so as to provide that funds  
21 invested by the state from the Seed-Capital Fund, with certain restrictions, may include funds  
22 from sources other than the investment entity; to provide for related matters; to provide an  
23 effective date; to repeal conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

1 **PART I**

2 **SECTION 1-1.**

3 This Act shall be known and may be cited as the "Georgia Science Education and  
4 Employment Development Act of 2008."

5 **SECTION 1-2.**

6 Chapter 1 of Title 48 of the Official Code of Georgia Annotated, relating to revenue and  
7 taxation generally, is amended in Code Section 48-1-2, relating to definitions, by  
8 renumbering paragraphs (16) through (26) as paragraphs (17) through (27), respectively, and  
9 adding a new paragraph (16) to read as follows:

10 "(16) 'Life sciences' means research, development, and commercialization directly related  
11 to the use of compositions, methods, and organisms in cellular and molecular research,  
12 development, and manufacturing processes in areas such as pharmaceuticals, agriculture,  
13 homeland security, medical therapeutics, medical diagnostics, medical devices, veterinary  
14 medicine, plant biology, and microbiology; development and qualitative improvement  
15 in the areas of medical sciences, pharmaceutical sciences, environmental protection,  
16 biological sciences, zoology, botany, horticulture, ecology, toxicology, organic  
17 chemistry, physical chemistry, and physiology; and technological developments in the  
18 areas of molecular biology, genomics, proteomics, physiomics, nanotechnology,  
19 biodefense, biocomputing, bioinformatics, and other developments associated with  
20 biotechnology."

21 **SECTION 1-3.**

22 Article 1 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state  
23 administrative organization of revenue and taxation, is amended in Code Section 48-2-12,  
24 relating to the rules and regulations applicable to the Department of Revenue, by adding a  
25 new subsection to read as follows:

26 "(e) The commissioner shall not be authorized to provide by rule and regulation for the  
27 taxation of any pass through or intermediary funding or payments conducted by any  
28 individual, business, corporation, or other entity in this state whether in the form of a cash  
29 payment, a periodic or special distribution, distribution of other property, a credit to an  
30 individual or entity in lieu of such payment, or an individual's or entity's distributive  
31 share of income or other gain that is passed through, distributed, or credited to any  
32 nonresident partnership, business corporation, or individual. Any such rule or regulation  
33 to the contrary shall be null and void."

**SECTION 1-4.**

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income taxes, is amended in subsection (a) of Code Section 48-7-27, relating to computation of taxable net income, by replacing "; and" at the end of paragraph (14) with a semicolon, replacing the period at the end of paragraph (15) with "; and", and adding a new paragraph to read as follows:

"(16) The amount of funds paid to a taxpayer in the form of educational grants, scholarships, or other educational funding gifts or awards where such funds were expended for the purpose of attending any educational course offered by a university or college in Georgia to the extent that such amount was included in the taxpayer's federal adjusted gross income."

**SECTION 1-5.**

Said article is further amended in Code Section 48-7-27, relating to computation of taxable net income, by striking subsection (e), which is reserved, and adding a new subsection (e) to read as follows:

"(e) Georgia taxable net income shall not include any income of a taxpayer which is attributable directly to a life sciences business of the taxpayer which has relocated its primary place of business or business headquarters from another state or foreign state to the State of Georgia. The exclusion provided for under this subsection shall commence on the date that the business is relocated to Georgia and begins operations and shall continue for the ensuing 12 months or until such date that the business transfers its primary place of business or business headquarters from Georgia or otherwise ceases business operations in Georgia, whichever shall first occur. A life sciences business enterprise planning or undergoing a qualified business transfer to Georgia shall be eligible to make application to the commissioner for the income tax exemption. The department shall be authorized to determine eligibility for the income tax exemption ensuring that a business is a life sciences business and has transferred its business to this state."

**SECTION 1-6.**

Said article is further amended in Code Section 48-7-31, relating to taxation of corporations, by adding a new subsection (f) to read as follows:

"(f) Georgia taxable net income of a corporation shall not include any income of such corporation which is attributable directly to the business of the corporation which has been relocated from another state or foreign state to the State of Georgia where such corporation is a life sciences corporation. The exclusion provided for under this subsection shall commence on the date that the corporation is relocated to Georgia and begins operations

1 and shall continue for the ensuing 12 months or until such date that the corporation  
2 transfers its primary place of business or corporate headquarters from Georgia or otherwise  
3 ceases corporate operations in Georgia, whichever shall first occur. A life sciences  
4 corporation planning or undergoing a qualified business transfer to Georgia shall be  
5 eligible to make application to the commissioner for the income tax exemption. The  
6 department shall be authorized to determine eligibility for the income tax exemption  
7 ensuring that a corporation is a life sciences corporation and has transferred a corporation  
8 to this state."

#### 9 **SECTION 1-7.**

10 Said article is further amended by adding new Code sections to read as follows:

11 "48-7-40.27.

12 (a) This Code section shall be known and may be cited as the 'Georgia Research and  
13 Development Investor Tax Credit.'

14 (b) The legislature finds that the welfare of this state is enhanced by the research and  
15 development of new discoveries in Georgia and that the eventual commercialization of  
16 Georgia research and development in a healthy entrepreneurial business environment  
17 creates jobs and strengthens Georgia's economy. Ready sources of capital necessary to  
18 support research and development are not currently available in the State of Georgia. This  
19 Code section is enacted for the purpose of facilitating the availability of equity investment  
20 in Georgia research and commercial development to expand Georgia's economy by  
21 enlarging its base of wealth, creating businesses, and supporting the efforts of Georgia  
22 researchers and educators.

23 (c) As used in this Code section, the term 'qualified investment' means a contribution of  
24 cash or a cash equivalent for the purpose of the research and development of innovative  
25 devices and discoveries by individuals, universities, colleges, or businesses, both private  
26 and public; provided, however, that a qualified investment shall only qualify for the credit  
27 provided by this Code section if such research and development is conducted in Georgia  
28 and is based upon reasonable and accepted scientific methods and practices. Qualified  
29 investments may be secured or unsecured and may be made at risk of loss or made as a gift,  
30 grant, or scholarship. Qualified investment also means a contribution of a cash or cash  
31 equivalent by a pass through or intermediary entity domiciled in the State of Georgia.

32 (d) There shall be allowed to each person or entity making a qualified investment who is  
33 subject to the taxes imposed by this chapter a tax credit that shall be deductible from the  
34 investor's net income tax liability, if any, for the taxable year in which the investment was  
35 made in an amount of 50 percent of the qualified investment made by the taxpayer in each  
36 qualified investment.

1 (e) In the event that the total amount of the tax credit under this Code section for a taxable  
2 year exceeds the taxpayer's income tax liability, any unused tax credit shall be allowed the  
3 taxpayer against the next two succeeding years' tax liabilities. No such tax credit shall be  
4 allowed the taxpayer against prior years' tax liabilities.

5 (f) The commissioner shall be authorized to promulgate any rules and regulations  
6 necessary to implement and administer the provisions of this Code section.

7 48-7-40.28.

8 (a) This Code section shall be known and may be cited as the 'Biofuel Tax Credit.'

9 (b) As used in this Code section, the term:

10 (1) 'Alternative fuel facility' means any facility located in this state which is primarily  
11 dedicated to the production, processing, and sale of ethanol, biodiesel, butanol, and their  
12 by-products.

13 (2) 'Biomass materials' means any agricultural product or animal waste or by-product  
14 grown or produced in Georgia that is used in or for the production and processing of  
15 ethanol, biodiesel, butanol, and their by-products, including agricultural products, forestry  
16 products, animal fat by-products, or the wastes of such products.

17 (c) There shall be allowed to each person or entity who sells qualified biomass material  
18 or alternative fuels produced in a qualified alternative fuel facility and who is subject to the  
19 taxes imposed by this chapter a tax credit in the amount of 10 percent of the sale.

20 (d) In the event that the total amount of the tax credit under this Code section for a taxable  
21 year exceeds the taxpayer's income tax liability, any unused tax credit shall be allowed the  
22 taxpayer against the next two succeeding years' tax liabilities. No such tax credit shall be  
23 allowed the taxpayer against prior years tax liabilities.

24 (e) The commissioner shall promulgate any rules and regulations necessary to implement  
25 and administer this Code section.

26 48-7-40.29.

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

28 (1) 'Credit' means a state income tax credit against the tax imposed pursuant to this  
29 article in an amount equal to 25 percent of the taxpayer's qualified investment.

30 (2) 'Qualified investment' means a cash investment in the research fund that is not a cash  
31 investment made by the state or on behalf of the state.

32 (3) 'Research fund' means a fund that is an investment entity pursuant to paragraph (7)  
33 of Code Section 10-10-1, the purpose of which is to provide early-stage financing for  
34 businesses formed as a result of the intellectual property resulting from the research  
35 conducted in the research universities in this state.

1 (b) A taxpayer shall be entitled to a credit for any qualified investment, subject to the  
2 conditions and limitations set forth in this Code section. Once the research fund reaches  
3 \$30 million in total qualified investments, investors shall no longer be eligible for a credit  
4 pursuant to this subsection with respect to all subsequent qualified investments.

5 (c) The credit provided in subsection (b) of this Code section shall be subject to the  
6 following conditions and limitations:

7 (1) In no event shall the credit for a taxable year exceed the taxpayer's income tax  
8 liability. Any unused portion of the credit shall be permitted to be carried forward and  
9 applied to the taxpayer's tax liability for the subsequent ten years. The credit shall not  
10 be applied against the taxpayer's prior years' tax liabilities;

11 (2) The utilization of the credit shall have no effect on the taxpayer's basis in its  
12 investment;

13 (3) A taxpayer shall only be allowed a credit for a qualified investment if the research  
14 fund issues to such taxpayer a certification that such investment meets the requirements  
15 of this Code section. Such certification shall include the taxpayer's name, address, the  
16 last four digits of the taxpayer's social security number or the employer identification  
17 number, as appropriate, the date, the amount of the qualified investment, and the amount  
18 of tax credit to which the taxpayer is entitled;

19 (4) If the taxpayer is a Georgia Subchapter 'S' corporation, a partnership, or a limited  
20 liability company taxed as a partnership, the credit shall be claimed by the respective  
21 shareholders, partners, or members of such entities in the same manner as they would  
22 account for their proportionate shares of income or loss from such entities. For the  
23 purposes of this Code section, such shareholders, partners, or members shall be  
24 considered to have made the qualified investments attributable to their interest in such  
25 entities; and

26 (5) No taxpayer shall be eligible to claim the credit provided in subsection (b) of this  
27 Code section for a cash investment if they claim the tax credit provided in Code Section  
28 48-7-40.28 for such cash investment.

29 (d) The research fund shall provide the department at least on an annual basis a report that  
30 includes the taxpayer's name, the last four digits of the taxpayer's social security number  
31 or the employer identification number, as appropriate, and the amount of the taxpayer's  
32 qualified investment for which the research fund has issued to such taxpayer the  
33 certification pursuant to paragraph (3) of subsection (c) of this Code section. The research  
34 fund shall file this report with the department no later than January 31 of the year following  
35 the end of the reporting year.

36 (e) In the event that the research fund liquidates prior to the investment of all of the cash  
37 received from taxpayers, the credit claimed with respect to such uninvested cash shall be

1 recaptured. Such recapture shall be equal to the amount of the credit attributable to the  
2 qualified investment not invested by the research fund and returned to the taxpayer by the  
3 research fund. The recaptured amount shall be treated as taxes payable to the state for the  
4 taxable year in which such return of such investment occurs.

5 (f) The commissioner may require such reports, promulgate such regulations, and gather  
6 such relevant data deemed necessary and advisable for the implementation of this Code  
7 section.

8 48-7-40.30.

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

10 (1) 'Credit' means a state income tax credit against the tax imposed pursuant to this  
11 article in an amount equal to 10 percent of the taxpayer's qualified investment.

12 (2) 'Qualified investment' means a cash investment in a legal entity in which the research  
13 fund has invested; provided, however, that such investment has been made by the  
14 taxpayer at the invitation of the research fund with the express intention of permitting the  
15 taxpayer making such qualified investment to qualify for the credit.

16 (3) 'Research fund' means a fund that is an investment entity pursuant to paragraph (7)  
17 of Code Section 10-10-1, the purpose of which is to provide early-stage financing for  
18 businesses formed as a result of the intellectual property resulting from the research  
19 conducted in the research universities in this state.

20 (b) A taxpayer shall be entitled to a credit for any qualified investment, subject to the  
21 conditions and limitations set forth in this Code section. Once the total amount of qualified  
22 investments reaches \$75 million, investors shall no longer be eligible for a credit pursuant  
23 to this subsection with respect to all subsequent qualified investments.

24 (c) The credit provided in subsection (b) of this Code section shall be subject to the  
25 following conditions and limitations:

26 (1) In no event shall the credit for a taxable year exceed the taxpayer's income tax  
27 liability. Any unused portion of the credit shall be permitted to be carried forward and  
28 applied to the taxpayer's tax liability for the subsequent ten years. The credit shall not  
29 be applied against the taxpayer's prior years' tax liabilities;

30 (2) The utilization of the credit shall have no effect on the taxpayer's basis in its  
31 investment;

32 (3) A taxpayer shall only be allowed a credit for a qualified investment if the research  
33 fund issues to such taxpayer a certification that such investment meets the requirements  
34 of this Code section. Such certification shall include the taxpayer's name, address, the  
35 last four digits of the taxpayer's social security number or the employer identification

1 number, as appropriate, the date, the amount of the qualified investment, and the amount  
2 of the credit to which the taxpayer is entitled;

3 (4) If the taxpayer is a Georgia Subchapter 'S' corporation, a partnership, or a limited  
4 liability company taxed as a partnership, the credit shall be claimed by the respective  
5 shareholders, partners, or members of such entities in the same manner as they would  
6 account for their proportionate shares of income or loss from such entities. For the  
7 purposes of this Code section, such shareholders, partners, or members shall be  
8 considered to have made the qualified investments attributable to their interest in such  
9 entities; and

10 (5) A taxpayer shall not claim the credit provided in subsection (b) of this Code section  
11 for a cash investment into the research fund.

12 (d) The research fund shall provide the department at least on an annual basis a report that  
13 includes the taxpayer's name, the last four digits of the taxpayer's social security number  
14 or the employer identification number, as appropriate, and the amount of the taxpayer's  
15 qualified investment for which the research fund has issued to such taxpayer the  
16 certification pursuant to paragraph (3) of subsection (c) of this Code section. The research  
17 fund shall file this report with the department no later than January 31 of the year following  
18 the end of the reporting year.

19 (e) The commissioner may require such reports, promulgate such regulations, and gather  
20 such relevant data deemed necessary and advisable for the implementation of this Code  
21 section."

## 22 SECTION 1-8.

23 Said article is further amended by adding a new Code section to read as follows:

24 "48-7-43.

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

26 (1) 'Employer' means any employer upon whom an income tax is imposed by this  
27 chapter; provided, however, that a significant component of the employer's business must  
28 include scientific research, development, or invention.

29 (2) 'Employment' means any job, whether part time or full time, or any internship  
30 program whereby educational credit is provided by the student's educational institution,  
31 which job or internship includes the application of scientific methods.

32 (3) 'Student' means a person under the age of 25 years who has been enrolled in a public  
33 or private postsecondary or high school educational institution in this state during the  
34 previous nine months, who is in good standing for continued enrollment, and who, during  
35 the taxable year, remained enrolled in an educational institution for a minimum of nine  
36 months and while enrolled has attempted at least 15 quarter hours or 12 semester hours.

1 (b) A tax credit against the tax imposed by this chapter shall be granted to an employer  
 2 who first provides employment for a student on or after April 15, 2008. The amount of the  
 3 tax credit shall be 100 percent of the wages paid to any such student; provided, however,  
 4 that such tax credit may not exceed \$25,000.00 per student.

5 (c) The tax credit granted under this Code section shall not exceed the amount of the  
 6 employer's income tax liability for the taxable year as computed without regard to this  
 7 Code section. Any such excess tax credit may be carried over and claimed during the  
 8 five-year period after the taxable year for which the tax credit is claimed until such tax  
 9 credit is exhausted. No such tax credit shall be allowed the taxpayer against prior years'  
 10 tax liabilities.

11 (d) To be eligible to claim the tax credit granted under this Code section, the employer  
 12 shall certify to the department the name of the employed student; include a letter from the  
 13 student's educational institution evidencing that such student has attempted the requisite  
 14 number of quarter or semester hours during the taxable year; provide written evidence of  
 15 the student's wages, which may include, but not be limited to, copies of the student's W-2  
 16 forms prepared by or for the employer; and furnish such other information as may be  
 17 required by the department to ensure that tax credits are only granted to employers who  
 18 provide employment for bona fide students pursuant to this Code section. The department  
 19 shall adopt rules and regulations and forms to implement this tax credit program."

## 20 **SECTION 1-9.**

21 Article 4 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to the  
 22 corporate net worth tax, is amended in Code Section 48-13-71, relating to organizations and  
 23 companies exempt from corporate net worth tax, by striking "and" at the end of paragraph  
 24 (1), striking the period and inserting "; and" at the end of paragraph (2), and adding a new  
 25 paragraph to read as follows:

26 "(3) Any life sciences organization, business, corporation, or company that has transferred  
 27 its primary business operations or headquarters from another state or foreign state to the  
 28 State of Georgia for the first 12 months of operation in Georgia, as determined by the  
 29 department."

## 30 **PART II**

### 31 **SECTION 2-1.**

32 Chapter 10 of Title 10 of the Official Code of Georgia Annotated, relating to the  
 33 Seed-Capital Fund, is amended in Code Section 10-10-4, relating to investing of funds with  
 34 investment entities, by revising paragraph (1) of subsection (b) as follows:

35 "(1) Either:

1 (A) At least \$3.00 of equity contributions has been committed in writing to the  
 2 investment entity by persons other than the state for every \$1.00 of equity contributions  
 3 committed by the state from the fund or from an investment entity ~~as to~~ which the state  
 4 is the sole limited liability owner ~~to the investment entity~~ of; or

5 (B) At least \$1.00 of equity contributions has been committed in writing to the  
 6 investment entity by persons other than the state for every \$1.00 of equity contributions  
 7 committed by the state from the fund or from an investment entity ~~as to~~ which the state  
 8 is the sole limited liability owner ~~to an investment entity~~ of; provided, however, that no  
 9 investment is to be made from such investment entity in qualified securities ~~without an~~  
 10 ~~equal or greater investment in the same enterprise from sources other than the~~  
 11 ~~investment entity, such that~~ unless, in total, at least \$3.00 of investment from sources  
 12 other than the state, including which may include funds from sources other than the  
 13 investment entity and funds invested by the investment entity in the enterprise that are  
 14 other than from equity contributions made by the state from the fund or from an  
 15 investment entity ~~as to~~ which the state is the sole limited liability owner of, has been  
 16 committed to such enterprise for every \$1.00 of the state's portion of the amount  
 17 invested in the qualified securities of such enterprise;"

18 **PART III**

19 **SECTION 3-1.**

20 This Act shall become effective January 1, 2009, and shall be applicable to all taxable years  
 21 beginning on or after January 1, 2009.

22 **SECTION 3-2.**

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