

The House Committee on Small Business Development and Job Creation offers the following substitute to HB 1023:

A BILL TO BE ENTITLED
AN ACT

To enact the Jobs, Opportunity, and Business Success Act of 2010; to amend and enact provisions intended to provide for tax relief and encourage employment opportunities and business stimulation; to provide for a short title; to provide for legislative intent; to amend Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships, and associations, so as to provide for a period of time for the waiver of certain filing fees otherwise charged in connection with such entities; to amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, so as to provide that, for a period of time, employers who hire persons receiving employment security benefits shall be entitled to a credit against employer contributions; to amend Title 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," so as to provide that a portion of net long-term capital gains shall be excluded from state taxable income of corporations and individuals; to provide for credits against state income tax for employers employing certain previously unemployed persons; to provide for an income tax credit for certain qualified business investments for a limited period of time; to provide for a short title; to provide for legislative findings and intent; to provide for definitions; to provide for conditions and limitations; to provide for powers, duties, and authority of the state revenue commissioner with respect to the foregoing; to eliminate the corporate net worth tax; to provide for other related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

(a) This Act shall be known and may be cited as the "Jobs, Opportunity, and Business Success Act of 2010."

(b) The General Assembly intends through the enactment of this Act to provide for tax relief and encourage employment opportunities and business stimulation.

SECTION 2.

Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships, and associations, is amended by revising Code Section 14-2-122, relating to fees for filings related to business corporations, as follows:

"14-2-122.

(a) The Secretary of State shall collect the following fees and penalties when the documents described in this Code section are delivered to him or her for filing:

<u>Document</u>	<u>Fee</u>
(1) Articles of incorporation	\$ 100.00
(2) Application for certificate of authority	225.00
(3) Annual registration	30.00
(4) Penalty for late filing of annual registration	25.00
(5) Agent's statement of resignation	No fee
(6) Certificate of judicial dissolution	No fee
(7) Articles of dissolution or intent to dissolve	No fee
(8) Application of withdrawal	No fee
(9) Application for reservation of a corporate name	25.00
(10) Civil penalty for a foreign corporation transacting business in this state without a certificate of authority	500.00
(11) Statement of change of address of registered agent...\$5.00 per corporation but not less than	20.00
(12) Application for reinstatement	100.00
(13) Certificate of conversion	95.00
(14) Any other document required or permitted to be filed by this chapter . .	20.00

(b) In order to create a 'Year for Georgia Entrepreneurs,' for the period of time beginning July 1, 2010, and ending June 30, 2011, the fees specified in paragraph (1) of subsection (a) of this Code section shall be waived for applications filed electronically."

SECTION 3.

Said title is further amended by revising Code Section 14-9-1101, relating to fees for filings related to limited partnerships, as follows:

"14-9-1101.

(a) The Secretary of State shall charge and collect for filing:

<u>Document</u>	<u>Fee</u>
(1) A certificate of limited partnership	\$ 100.00

60	(2) A registration of a foreign limited partnership	225.00
61	(3) An annual registration	30.00
62	(4) Penalty for late filing of annual registration	25.00
63	(5) Agent's statement of resignation	No fee
64	(6) Certificate of cancellation	No fee
65	(7) Application of withdrawal	No fee
66	(8) Statement of change of address of registered agent or registered office...	
67	\$5.00 per limited partnership but not less than	20.00
68	(9) An amendment to a certificate of limited partnership for the purpose of	
69	becoming a limited liability partnership	100.00
70	(10) Certificate of election to become a limited partnership	80.00
71	(11) Certificate of conversion	95.00
72	(12) Application for reservation of a name	25.00
73	(13) Any other document required or permitted pursuant to this chapter	20.00
74	<u>(b) In order to create a 'Year for Georgia Entrepreneurs,' for the period of time beginning</u>	
75	<u>July 1, 2010, and ending June 30, 2011, the fees specified in paragraph (1) of subsection</u>	
76	<u>(a) of this Code section shall be waived for applications filed electronically."</u>	

SECTION 4.

Said title is further amended by revising Code Section 14-11-1101, relating to fees for filings related to limited liability companies, as follows:

"14-11-1101.

(a) The Secretary of State shall collect the following fees when the documents described below are delivered to the Secretary of State for filing pursuant to this chapter:

	<u>Document</u>	<u>Fee</u>
84	(1) Articles of organization	\$ 100.00
85	(2) Articles of amendment	20.00
86	(3) Articles of merger	20.00
87	(4) Certificate of election under Code Section 14-11-212 (together with	
88	articles of organization)	95.00
89	(5) Application for certificate of authority to transact business	225.00
90	(6) Statement of commencement of winding up	No Fee fee
91	(7) Certificate of termination	No Fee fee
92	(8) Application of withdrawal	No fee
93	(9) Articles of correction	20.00

94	(10) Application for reservation of a name	25.00
95	(11) Statement of change of registered office or registered agent...\$5.00	
96	per limited liability company (foreign or domestic), but not less than . .	20.00
97	(12) Registered agent's statement of resignation pursuant to subsection (d)	
98	of Code Section 14-11-209 or subsection (d) of Code Section 14-11-703	No fee
99	(13) Certificate of judicial dissolution	No fee
100	(14) Annual registration (foreign or domestic)	30.00
101	(15) Penalty for late filing of annual registration	25.00
102	(16) Reinstatement fee	100.00
103	(17) Any other document required or permitted to be filed by	
104	this chapter	20.00
105	(18) Certificate of conversion	95.00
106	(b) The Secretary of State shall collect the penalty provided for in paragraph (2) of	
107	subsection (c) of Code Section 14-11-711.	
108	(c) <u>In order to create a 'Year for Georgia Entrepreneurs,' for the period of time beginning</u>	
109	<u>July 1, 2010, and ending June 30, 2011, the fees specified in paragraph (1) of subsection</u>	
110	<u>(a) of this Code section shall be waived for applications filed electronically."</u>	

111 SECTION 5.

112 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
 113 is amended by revising Code Section 34-8-156, relating to the State-wide Reserve Ratio and
 114 reduction in tax rate, by adding a new subsection to read as follows:

115 "(g)(1) The Commissioner shall make an expedited request within 15 days of the
 116 effective date of this Act for a determination by the United States secretary of labor that
 117 implementation of paragraph (3) of this subsection is in conformity with federal law. If
 118 the United States secretary of labor determines that paragraph (3) of this subsection is not
 119 in conformity with federal law and cannot be adjusted procedurally by the Commissioner
 120 pursuant to Code Section 34-8-93 pending action of the General Assembly to bring about
 121 conformity with federal law, paragraph (3) of this subsection shall not become effective.
 122 Upon such determination the Commissioner shall take all necessary steps to obtain a
 123 waiver of conformity with federal law from the United States secretary of labor. If such
 124 waiver is granted, paragraph (3) of this subsection shall become effective immediately
 125 upon the granting of the waiver. If the United States secretary of labor determines that
 126 paragraph (3) of this subsection could be implemented in conformity with federal law if
 127 procedurally adjusted by the Commissioner, the Commissioner shall exercise the
 128 authority granted under Code Section 34-8-93 to make such adjustments and paragraph

(3) of this subsection shall become effective immediately following such adjustment. If the United States secretary of labor determines that paragraph (3) of this subsection is in conformity with federal law, paragraph (3) of this subsection shall become effective immediately upon such determination.

(2) In the event paragraph (3) of this subsection becomes effective, it shall not be implemented unless the Commissioner determines that the employer contribution and reimbursement liability shall not increase as a result of such implementation.

(3) If this paragraph becomes effective, for calendar quarters beginning on or after July 1, 2010, there shall be a credit to be known as the Georgia Works Tax Credit. The amount of the credit shall be not less than \$25.00 and not more than \$125.00 per individual employee per calendar quarter, as further described in this paragraph. The determination of the amount of the credit, within the permissible range, shall be made and periodically revised by the Commissioner based on the Commissioner's evaluation of conditions in the Georgia labor market, the state of the economy, and the State-wide Reserve Ratio. The credit may be claimed by an employer for up to four calendar quarters for each individual hired by that employer for services to be performed in this state under the following conditions:

(A) Such individual:

(i) Has filed a claim for unemployment compensation in this state and is currently receiving weekly unemployment compensation benefits on that claim under the provisions of Article 7 of this chapter and such benefits are chargeable to the experience rating account of an employer under Code Section 34-8-157;

(ii) Has been profiled by the department as likely to exhaust benefits;

(iii) Has no return-to-work date or promise of future employment; and

(iv) Has at least eight weeks of benefit eligibility remaining on his or her current claim at the time the employer hires the individual;

(B) The credit for each such hired individual per calendar quarter may be claimed on the reports required to be filed under Code Section 34-8-165 as a reduction from amounts otherwise due in each of the four calendar quarters immediately following the hire date of the individual; provided, however, that the credit may not be claimed for any individual who has been hired more than once by the employer claiming the credit or for more than four calendar quarters for that one hiring;

(C) For each calendar quarter for which the credit is claimed, such individual shall be continuously employed by the employer claiming the credit, and such individual's employment with that employer shall consist of at least 30 hours per week during each week of that calendar quarter;

(D) The credit shall be timely claimed for the calendar quarter to which the credit is applicable, and in no event later than the last day of the reporting month following the end of the calendar quarter to which the credit is applicable. The credit shall not be refundable. The credit cannot reduce tax liability below zero; provided, however, that the credit, if properly and timely claimed, may be carried forward and applied against contributions due in any subsequent calendar quarter in the same calendar year as claimed. Any unused credit remaining at the end of a calendar year shall not be carried forward to another calendar year and shall be deemed to have expired; and

(E) No credit shall be claimed or taken by any employer who fails to timely file any report or to timely pay all amounts otherwise due for all calendar quarters during the calendar year for which the credit is claimed. In the event an employer has claimed a credit under this Code section and fails to timely file any report or to timely pay all amounts otherwise due during the year the credit is claimed, the amount of any credits claimed for that calendar year shall be canceled and become delinquent as of the date originally due under Code Section 34-8-165 and subject to all the provisions of this article as if no credit had ever been available or claimed."

SECTION 6.

Title 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," is amended in Code Section 48-7-21, relating to taxation of corporations, by adding at the end of subsection (b) a new paragraph (17) to read as follows:

"(17)(A) For the taxable year beginning on or after January 1 of the calendar year immediately following the state fiscal year in which the revenue shortfall reserve is funded at the level of \$500 million or more as certified to the commissioner in writing by the state auditor, and prior to January 1 of the next succeeding taxable year, there shall be subtracted from taxable income an amount equal to 25 percent of the excess of the net long-term capital gain, over the net short-term capital loss included in Georgia taxable net income.

(B) For all taxable years beginning on or after January 1 of the taxable year next succeeding the taxable year specified in subparagraph (A) of this paragraph, there shall be subtracted from taxable income an amount equal to 50 percent of the excess of the net long-term capital gain, over the net short-term capital loss included in Georgia taxable net income."

SECTION 7.

Said title is further amended in subsection (a) of Code Section 48-7-27, relating to computation of taxable net income of individuals, by deleting "and" at the end of paragraph

(14); replacing the period at the end of paragraph (15) with "; and"; and adding a new paragraph (16) to read as follows:

"(16)(A) For the taxable year beginning on or after January 1 of the calendar year immediately following the state fiscal year in which the revenue shortfall reserve is funded at the level of \$500 million or more as certified to the commissioner in writing by the state auditor, and prior to January 1 of the next succeeding taxable year, an amount equal to 25 percent of the excess of the net long-term capital gain, over the net short-term capital loss included in Georgia taxable net income.

(B) For all taxable years beginning on or after January 1 of the taxable year next succeeding the taxable year specified in subparagraph (A) of this paragraph, an amount equal to 50 percent of the excess of the net long-term capital gain, over the net short-term capital loss included in Georgia taxable net income.

(C) For purposes of this paragraph, the terms 'net long-term capital gain' and 'net short-term capital loss' shall mean the same as defined in Section 1222 of the Internal Revenue Code."

SECTION 8.

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

"48-7-29.18.

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

(1) 'Creditable employee' means an employee of an employer who:

(A) Is first employed by the employer in this state on or after the effective date of this Code section and prior to July 1, 2011;

(B) Was unemployed at least 13 weeks immediately prior to becoming so employed and was eligible to receive unemployment benefits during such time;

(C) Remains so employed by the employer for at least 24 consecutive months;

(D) Is employed by the employer in a net new job which did not previously exist rather than merely being employed by the employer to fill a vacant position;

(E) Executes and provides a notarized affidavit swearing or affirming that such employee is eligible to work in the United States because such person is either a United States citizen or a lawfully present alien according to federal law; and

(F) During the entire period of such employment receives annual compensation in an amount at least equal to 180 percent of the poverty level. The commissioner shall establish and maintain rules governing the determination of the poverty level. The rules may use for this purpose the United States Department of Health and Human Services Poverty Guidelines or any other similar guidelines established by the federal

government, if the commissioner determines that such federal guidelines reflect the poverty level of persons in the State of Georgia.

(G) Executes and provides a notarized affidavit swearing or affirming that such employee is eligible to work in the United States because such person is either a United States citizen or a lawfully present alien according to federal law; and

(H) During the entire period of such employment receives annual compensation in an amount at least equal to 180 percent of the poverty level. The commissioner shall establish and maintain rules governing the determination of the poverty level. The rules may use for this purpose the United States Department of Health and Human Services Poverty Guidelines or any other similar guidelines established by the federal government, if the commissioner determines that such federal guidelines reflect the poverty level of persons in the State of Georgia.

(2) 'Staffing firm' means an organization that hires its own employees and assigns them to a client to support or supplement the client's work force in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(b) An employer who has one or more creditable employees and who provides a notarized affidavit attesting to use of the federal employment verification system now known as 'E-Verify' or any future federal employment verification system shall be eligible to apply for and receive a credit against taxes imposed under this chapter. The amount of the credit shall be \$2,400.00 for each creditable employee. Eligibility for the credit shall be established as of the time the creditable employee completes 24 consecutive months of employment; and the credit shall be claimed for the taxable year in which the twenty-fourth month of such employment is completed.

(c) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding two years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d) The credit shall be claimed and granted in such manner as shall be specified by rules adopted by the commissioner; and such rules shall specifically provide for the manner of establishing the qualifying status of unemployment of the employee prior to employment.

(e) For the purpose of determining whether an employee is employed by the employer under subsection (a) of this Code section, employment may include up to 13 weeks of continuous prior service for the employer as a temporary employee of a staffing firm."

SECTION 9.

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

"48-7-40.29.

(a) This Code section shall be known and may be cited as the 'Angel Investor Income Tax Credit.'

(b) The General Assembly finds that the welfare of the state is enhanced by a healthy entrepreneurial business environment and that ready sources of capital necessary to support this environment are not currently available in the state.

(c) The intent of this Code section is to achieve the following:

(1) To create the angel investor income tax credit program to encourage third-party investors to invest in early stage, innovative, wealth-creating businesses;

(2) To facilitate the availability of equity investment in businesses in the early stages of commercial development;

(3) To expand the economy of the state by enlarging its base of wealth-creating businesses; and

(4) To enlarge the number of high quality, high paying jobs within the state both to attract qualified individuals to move to and work within the state and to retain young people educated in Georgia.

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

(1) 'Investment' means:

(A) A contribution of cash or cash equivalents in a qualified Georgia business for common or preferred stock or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common or preferred stock;

(B) An interest in a partnership in which contribution of proceeds is not secured or guaranteed and is at risk or otherwise dependent solely upon the success of a qualified Georgia business and which proceeds are used solely for capital improvements, research and development, or working capital for such qualified Georgia business; and

(C) A contribution of cash or cash equivalents by a pass-through entity domiciled in this state;

provided, however, that funds constituting an investment cannot have been raised or be raised as a result of other tax incentive programs, cannot be composed of funds raised prior to January 1, 2011, and pooled or organized through capital placement agreements for the purpose of equity and venture capital investing, and cannot be composed of pooled capital in the form of hedge funds or commodities funds. Furthermore, the purchase of equity securities shall not qualify as an investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting the purchase.

(2) 'Investor' means a taxpayer of this state.

(3) 'Net income tax liability' means income tax liability reduced by all other credits allowed under this chapter.

(4) 'Qualified Georgia business' means a business that is domiciled in this state, employs 20 or fewer people in this state, has gross annual sales of less than \$500,000.00, has not obtained during its existence more than \$1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments not including commercial loans from chartered banking or savings and loan institutions, has a business net worth of less than \$3 million.

(e) For any investor making an investment in the 2010, 2011, 2012, 2013, or 2014 calendar year there shall be allowed an income tax credit that shall be deductible from such investor's net income tax liability, if any, imposed by this chapter for the taxable year commencing on January 1 of the second year following the year in which the investment was made as provided by this Code section.

(f) For any investor that is a pass-through entity and purchases the equity securities or subordinated debt of a qualified Georgia business directly from that business there shall be allowed an income tax credit that shall be deductible from such investor's net income tax liability, if any, imposed by this chapter for the taxable year in which the investment was made and the following two years as provided by this Code section; provided, however, that no credit under this Code section shall be allowed to a pass-through entity that has current committed capital under management in excess of \$5 million or to a pass-through entity that is a qualified Georgia business.

(g) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's net income tax liability. Any unused tax credit shall not be allowed the taxpayer against the succeeding two years' tax liabilities. No such tax credits shall be allowed the taxpayer against prior years' tax liability.

(h) The aggregate amount of credit allowed a taxpayer for one or more investments in a single taxable year under this Code section, whether directly or indirectly, shall not exceed \$50,000.00 or an amount equal to 50 percent of the aggregate amount of such investments in a single year, whichever is less.

(i)(1) The credit claimed under this Code section shall be recaptured if in the two-year period after the date of the investment:

(A) The qualified Georgia business or an interest in such business has been sold by the investor; or

(B) The investor has withdrawn the investment wholly or partially from the qualified Georgia business.

(2) The credit shall not be recaptured if the qualified Georgia business ceases business operations.

(3) The recapture under this subsection shall be equal to 50 percent of the amount of the total tax credit claimed under this Code section. The amount of the credit recaptured shall apply only to the investment in the particular qualified business in which the investment was made. The amount of the recaptured tax credit determined under this subsection shall be added to the taxpayer's income tax liability for the taxable year in which the recapture occurs under this subsection.

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

(k)(1) The total aggregate amount of all tax credits allowed to investors or pass-through entities for investments made in the 2010 calendar year and claimed and allowed in the 2012 taxable year shall not exceed \$10 million in such year.

(2) The total aggregate amount of all tax credits allowed to investors or pass-through entities for investments made in the 2011 calendar year and claimed and allowed in the 2013 taxable year shall not exceed \$10 million in such year.

(3) The total aggregate amount of all tax credits allowed to investors or pass-through entities for investments made in the 2012 calendar year and claimed and allowed in the 2014 taxable year shall not exceed \$10 million in such year.

(4) The total aggregate amount of all tax credits allowed to investors or pass-through entities for investments made in the 2013 calendar year and claimed and allowed in the 2015 taxable year shall not exceed \$10 million in such year.

(5) The total aggregate amount of all tax credits allowed to investors or pass-through entities for investments made in the 2014 calendar year and claimed and allowed in the 2016 taxable year shall not exceed \$10 million in such year.

(l) The commissioner shall allow the tax credits on a first come, first served basis.

(m) The taxpayer shall notify the department of the total amount of investment that the taxpayer intends to make before making the investment. The commissioner shall preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make the investment within 30 days after receiving notice from the department of the preapproved amount.

(n) No credit shall be claimed and allowed under this Code section for investments in any calendar year other than the calendar years specified in subsection (k) of this Code section.

(o) In order for the taxpayer to claim the tax credit under this Code section, a letter of confirmation of investment issued by the qualified Georgia business to which the investment was made shall be attached to the taxpayers tax return. However, in the event

the taxpayer files an electronic return, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner. The letter of confirmation of investment shall contain the taxpayer's name, address, tax identification number, and the amount and date of the contribution."

SECTION 10.

Said title is further amended by revising Article 4 of Chapter 13, relating to the corporate net worth tax, in its entirety as follows:

"ARTICLE 4

48-13-70.

(a) For net worth taxable years beginning on or after January 1, 2011, there shall be no corporate net worth taxes whatsoever levied or collected under this article and no corporate net worth returns are required.

(b) Tax, penalty, and interest liabilities and refund eligibility for prior net worth taxable years shall not be affected by the enactment of this revised article and shall continue to be governed by the provisions of this article as it existed immediately prior to the effective date of this Act."

SECTION 11.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 12.

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