

House Bill 1023 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Graves of the 12th, Everson of the 106th, Lunsford of the 110th, Ramsey of the 72nd, Scott of the 2nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To enact the Jobs, Opportunity, and Business Success Act of 2010; to amend and enact
2 provisions intended to provide for tax relief and encourage employment opportunities and
3 business stimulation; to provide for a short title; to provide for legislative intent; to amend
4 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
5 so as to provide that, for a period of time, employers who hire persons receiving employment
6 security benefits shall be entitled to a credit against employer contributions; to amend Title
7 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," so as to
8 provide that a portion of net long-term capital gains shall be excluded from state taxable
9 income of corporations and individuals; to provide for an income tax credit for certain
10 qualified business investments for a limited period of time; to provide for legislative findings
11 and intent; to provide for definitions; to provide for procedures, conditions, and limitations;
12 to provide for powers, duties, and authority of the state revenue commissioner with respect
13 to the foregoing; to eliminate the corporate net worth tax; to provide for the effect of such
14 elimination on liabilities and eligibilities; to provide that such elimination shall not abate or
15 affect prosecutions, punishments, penalties, administrative proceedings or remedies, or civil
16 actions related to certain violations; to provide for other related matters; to provide for
17 effective dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 style="text-align:center">**SECTION 1.**

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

23 "(g)(1) The Commissioner shall make an expedited request within 15 days of the
24 effective date of this Act for a determination by the United States secretary of labor that
25 implementation of paragraph (3) of this subsection is in conformity with federal law. If

26 the United States secretary of labor determines that paragraph (3) of this subsection is not
 27 in conformity with federal law and cannot be adjusted procedurally by the Commissioner
 28 pursuant to Code Section 34-8-93 pending action of the General Assembly to bring about
 29 conformity with federal law, paragraph (3) of this subsection shall not become effective.
 30 Upon such determination the Commissioner shall take all necessary steps to obtain a
 31 waiver of conformity with federal law from the United States secretary of labor. If such
 32 waiver is granted, paragraph (3) of this subsection shall become effective immediately
 33 upon the granting of the waiver. If the United States secretary of labor determines that
 34 paragraph (3) of this subsection could be implemented in conformity with federal law if
 35 procedurally adjusted by the Commissioner, the Commissioner shall exercise the
 36 authority granted under Code Section 34-8-93 to make such adjustments and paragraph
 37 (3) of this subsection shall become effective immediately following such adjustment. If
 38 the United States secretary of labor determines that paragraph (3) of this subsection is in
 39 conformity with federal law, paragraph (3) of this subsection shall become effective
 40 immediately upon such determination.

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

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

54 (A) Such individual:

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

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

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

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

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

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

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

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

89 **SECTION 2.**

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

93 "(17)(A) For the taxable year beginning on or after January 1 of the calendar year
 94 immediately following the state fiscal year in which the revenue shortfall reserve is
 95 funded at the level of \$1 billion or more as certified to the commissioner in writing by
 96 the state auditor, and prior to January 1 of the next succeeding taxable year, there shall
 97 be subtracted from taxable income an amount equal to 25 percent of the excess of the

98 net long-term capital gain, over the net short-term capital loss included in Georgia
 99 taxable net income.

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

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

108 **SECTION 3.**

109 Said title is further amended in subsection (a) of Code Section 48-7-27, relating to
 110 computation of taxable net income of individuals, by deleting "and" at the end of paragraph
 111 (14); replacing the period at the end of paragraph (15) with "; and"; and adding a new
 112 paragraph (16) to read as follows:

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

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

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

126 **SECTION 4.**

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

128 "48-7-40.29.

129 (a) The General Assembly finds that entrepreneurial businesses significantly contribute
 130 to the economy of the state. The intent of this Code section is to achieve the following:

131 (1) To encourage individual investors to invest in early stage, innovative, wealth-creating
 132 businesses;

- 133 (2) To enlarge the number of high quality, high paying jobs within the state both to
 134 attract qualified individuals to move to and work within this state and to retain young
 135 people educated in Georgia's universities and colleges;
- 136 (3) To expand the economy of Georgia by enlarging its base of wealth-creating
 137 businesses; and
- 138 (4) To support businesses seeking to commercialize technology invented in Georgia's
 139 universities and colleges.
- 140 (b) As used in this Code section, the term:
- 141 (1) 'Allowable credit' means the credit as it may be reduced pursuant to subparagraph (3)
 142 of subsection (i) of this Code section.
- 143 (2) 'Headquarters' means the principal central administrative office of a business located
 144 in this state which conducts significant operations of such business.
- 145 (3) 'Net income tax liability' means income tax liability reduced by all other credits
 146 allowed under this chapter.
- 147 (4) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability
 148 company taxed as a partnership.
- 149 (5) 'Professional services' means those services specified in paragraph (2) of Code
 150 Section 14-7-2 or any service which requires as a condition precedent to the rendering of
 151 such service the obtaining of a license from a state licensing board pursuant to Title 43.
- 152 (6) 'Qualified business' means a registered business that:
- 153 (A) Is either a corporation, limited liability company, or a general or limited
 154 partnership located in this state;
- 155 (B) Was organized no more than three years before the qualified investment was made;
- 156 (C) Has its headquarters located in this state at the time the investment was made and
 157 has maintained such headquarters for the entire time the qualified business benefitted
 158 from the tax credit provided for pursuant to this Code section;
- 159 (D) Employs 20 or fewer people in this state at the time it is registered as a qualified
 160 business;
- 161 (E) Has had in any complete fiscal year before registration gross annual revenue as
 162 determined in accordance with the Internal Revenue Code of \$500,000.00 or less on a
 163 consolidated basis;
- 164 (F) Has not obtained during its existence more than \$1 million in aggregate gross cash
 165 proceeds from the issuance of its equity or debt investments, not including commercial
 166 loans from chartered banking or savings and loan institutions;
- 167 (G) Has not utilized the tax credit described in Code Section 48-7-40.26;
- 168 (H) Is primarily engaged in manufacturing, processing, online and digital warehousing,
 169 online and digital wholesaling, software development, information technology services,

170 research and development, or a business providing services other than those described
 171 in subparagraph (I) of this paragraph; and

172 (I) Does not engage substantially in:

173 (i) Retail sales;

174 (ii) Real estate or construction;

175 (iii) Professional services;

176 (iv) Gambling;

177 (v) Natural resource extraction;

178 (vi) Financial, brokerage, or investment activities or insurance; or

179 (vii) Entertainment, amusement, recreation, or athletic or fitness activity for which
 180 an admission or membership is charged.

181 A business shall be substantially engaged in one of the above activities if its gross
 182 revenue from such activity exceeds 25 percent of its gross revenues in any fiscal year or
 183 it is established pursuant to its articles of incorporation, articles of organization, operating
 184 agreement or similar organizational documents to engage as one of its primary purposes
 185 such activity.

186 (7) 'Qualified investment' means an investment by a qualified investor of cash in a
 187 qualified business for common or preferred stock or an equity interest or a purchase for
 188 cash of qualified subordinated debt in a qualified business; provided, however, that funds
 189 constituting a qualified investment cannot have been raised or be raised as a result of
 190 other tax incentive programs. Furthermore, no investment of common or preferred stock
 191 or an equity interest or purchase of subordinated debt shall qualify as a qualified
 192 investment if a broker fee or commission or a similar remuneration is paid or given
 193 directly or indirectly for soliciting such investment or purchase.

194 (8) 'Qualified investor' means an accredited investor as that term is defined by the United
 195 States Securities and Exchange Commission who is:

196 (A) An individual person who is a resident of this state or a nonresident who is
 197 obligated to pay taxes imposed by this chapter; or

198 (B) A pass-through entity which is formed for investment purposes, has no business
 199 operations, has committed capital under management of equal to or less than \$5 million,
 200 and is not capitalized with funds raised or pooled through private placement
 201 memoranda directed to institutional investors. A venture capital fund or commodity
 202 fund with institutional investors or a hedge fund shall not qualify as a qualified investor.

203 (9) 'Qualified subordinated debt' means indebtedness that is not secured, that may or may
 204 not be convertible into common or preferred stock or other equity interest, and that is
 205 subordinated in payment to all other indebtedness of the qualified business issued or to

206 be issued for money borrowed and no part of which has a maturity date less than five
207 years after the date such indebtedness was purchased.

208 (10) 'Registered' or 'registration' means that a business has been certified by the
209 commissioner as a qualified business at the time of application to the commissioner.

210 (c) A qualified business shall register with the commissioner for purposes of this Code
211 section. Approval of such registration shall constitute certification by the commissioner
212 for 12 months after being issued. A business shall be permitted to renew its registration
213 with the commissioner so long as, at the time of renewal, the business remains a qualified
214 business.

215 (d) Any individual person making a qualified investment directly in a qualified business
216 in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 20 percent of the
217 amount invested against the tax imposed by this chapter commencing on January 1 of the
218 second year following the year in which the qualified investment was made as provided in
219 this Code section.

220 (e) Any pass-through entity making a qualified investment directly in a qualified business
221 in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 20 percent of the
222 amount invested against the tax imposed by this chapter commencing on January 1 of the
223 second year following the year in which the qualified investment was made as provided in
224 this Code section. Each individual who is a shareholder, partner, or member of an entity
225 shall be allocated the credit allowed the pass-through entity in an amount determined in the
226 same manner as the proportionate shares of income or loss of such pass-through entity
227 would be determined. If an individual's share of the pass-through entity's credit is limited
228 due to the maximum allowable credit under this Code section for a taxable year, the
229 pass-through entity and its owners may not reallocate the unused credit among the other
230 owners.

231 (f) Tax credits claimed pursuant to this Code section shall be subject to the following
232 conditions and limitations:

233 (1) The qualified investor is not eligible for the credit for the taxable year in which the
234 qualified investment is made but shall be eligible for the credit for the second taxable
235 year beginning after the qualified investment is made as provided in subsection (d) or (e)
236 of this Code section;

237 (2) The aggregate amount of credit allowed an individual for one or more qualified
238 investments in a single taxable year under this Code section, whether made directly or by
239 a pass-through entity and allocated to such individual, shall not exceed \$30,000.00;

240 (3) In no event shall the amount of the tax credit allowed an individual under this Code
241 section for a taxable year exceed such individual's net income tax liability. Any unused
242 credit amount shall be allowed to be carried forward for five years from the close of the

243 taxable year in which the qualified investment was made. No such credit shall be allowed
 244 against prior years' tax liability;

245 (4) The qualified investor's basis in the common or preferred stock, equity interest, or
 246 subordinated debt acquired as a result of the qualified investment shall be reduced for
 247 purposes of this chapter by the amount of the allowable credit;

248 (5) The credit shall not be transferrable by the qualified investor except to the heirs and
 249 legatees of the qualified investor upon his or her death and to his or her spouse or incident
 250 to divorce; and

251 (6) To be eligible for the credit provided in this Code section, the qualified investor must
 252 file an application for the credit with the commissioner on or before June 30 of the year
 253 following the calendar year in which the qualified investment was made.

254 (g) The registration of a business as a qualified business shall be subject to the following
 255 conditions and limitations:

256 (1) If the commissioner finds that any of the information contained in an application of
 257 a business for registration under this Code section is false, the commissioner shall revoke
 258 the registration of such business. The commissioner shall not revoke the registration of
 259 a business solely because it ceases business operations for an indefinite period of time,
 260 as long as the business renews its registration;

261 (2) A registration as a qualified business may not be sold or otherwise transferred, except
 262 that, if a qualified business enters into a merger, conversion, consolidation, or other
 263 similar transaction with another business and the surviving company would otherwise
 264 meet the criteria for being a qualified business, the surviving company retains the
 265 registration for the 12 month registration period without further application to the
 266 commissioner. In such a case, the qualified business must provide the commissioner with
 267 written notice of the merger, conversion, consolidation, or similar transaction and such
 268 other information as required by the commissioner; and

269 (3) The commissioner shall report to the House Committee on Ways and Means and the
 270 Senate Finance Committee each year all of the businesses that have registered with the
 271 commissioner as a qualified business. The report shall include the name and address of
 272 each business, the location of its headquarters, a description of the types of business in
 273 which it engages, the number of jobs created by the business during the period covered
 274 by the report, and the average wages paid by these jobs.

275 (h) Any credit claimed under this Code section shall be recaptured in the following
 276 situations and shall be subject to the following conditions and limitations:

277 (1) If within two years after the qualified investment was made, the qualified investor
 278 transfers any of the securities or subordinated debt received in the qualified investment
 279 to another person or entity, other than a transfer resulting from one of the following:

280 (A) The death of the qualified investor;
281 (B) A transfer to the spouse of the qualified investor or incident to divorce; or
282 (C) A merger, conversion, consolidation, sale of the qualified business's assets, or
283 similar transaction requiring approval by the owners of the qualified business under
284 applicable law, to the extent the qualified investor does not receive cash or tangible
285 property in such merger, conversion, consolidation, sale, or other similar transaction;
286 (2) Except as provided in paragraph (1) of this subsection, if within five years after the
287 qualified investment was made, the qualified business makes a redemption with respect
288 to the securities received or pays any principal of the subordinated debt;
289 (3) If within two years after the qualified investment was made, the qualified investor
290 participates in the operation of the qualified business. For the purpose of this paragraph,
291 a qualified investor participates in the operation of a qualified business if the qualified
292 investor, or the qualified investor's spouse, parent, sibling, or child, or a business
293 controlled by any of these individuals, provides services of any nature to the qualified
294 business for compensation, whether as an employee, a contractor, or otherwise.
295 However, a person who provides uncompensated professional advice to a qualified
296 business whether as an officer, a member of the board of directors or managers or
297 otherwise or participates in a stock or membership option or stock or membership plan,
298 or both, shall be eligible for the credit;
299 (4) The amount of the credit recaptured shall apply only to the qualified investment in
300 the particular qualified business in which the investment was made;
301 (5) The amount of the recaptured tax credit determined under this subsection shall be
302 added to the qualified investor's income tax liability for the taxable year in which the
303 recapture occurs under this subsection; and
304 (6) In the event the credit is recaptured because the qualified business ceases business
305 operations, dissolves, or liquidates, the qualified investor may claim either the credit
306 authorized under this Code section or any capital loss the qualified investor otherwise
307 would be able to claim regarding that qualified business, but shall not be authorized to
308 claim and be allowed both.
309 (i)(1) A qualified investor seeking to claim a tax credit provided for under this Code
310 section must submit an application to the commissioner for tentative approval of such tax
311 credit between September 1 and October 31 of the year for which the tax credit is claimed
312 or allowed. The commissioner shall promulgate the rules and forms on which the
313 application is to be submitted. Amounts specified on such application shall not be
314 changed by the qualified investor after the application is approved by the commissioner.
315 The commissioner shall review such application and shall tentatively approve such
316 application upon determining that it meets the requirements of this Code section.

317 (2) The commissioner shall provide tentative approval of the applications by the date
318 provided in paragraph (3) of this subsection as follows:

319 (A) The total aggregate amount of all tax credits allowed to qualified investors or
320 pass-through entities for investments made in the 2011 calendar year and claimed and
321 allowed in the 2013 taxable year shall not exceed \$3 million in such year;

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

325 (C) The total aggregate amount of all tax credits allowed to qualified investors or
326 pass-through entities for investments made in the 2013 calendar year and claimed and
327 allowed in the 2015 taxable year shall not exceed \$3 million in such year.

328 (3) The commissioner shall notify each qualified investor of the tax credits tentatively
329 approved and allocated to such qualified investor by December 31 of the year in which
330 the application was submitted. In the event that the credit amounts on the tax credit
331 applications filed with the commissioner exceed the maximum aggregate limit of tax
332 credits under this subsection, then the tax credits shall be allocated among the qualified
333 investors who filed a timely application on a pro rata basis based upon the amounts
334 otherwise allowed by this Code section. Once the tax credit application has been
335 approved and the amount approved has been communicated to the applicant, the qualified
336 investor may then apply the amount of the approved tax credit to its tax liability for the
337 tax year for which the approved application applies.

338 (j) The commissioner shall promulgate any rules and regulations necessary to
339 implement and administer this Code section."

340 **SECTION 5.**

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

343 "ARTICLE 4

344 48-13-70.

345 (a) For net worth taxable years beginning on or after January 1, 2012, there shall be no
346 corporate net worth taxes whatsoever levied or collected under this article and no corporate
347 net worth returns are required.

348 (b) Tax, penalty, and interest liabilities and refund eligibility for prior net worth taxable
349 years shall not be affected by the enactment of this revised article and shall continue to be
350 governed by the provisions of this article as it existed immediately prior to January 1, 2012.

351 (c) The revision of this article pursuant to this Code section shall not abate any
352 prosecution, punishment, penalty, administrative proceedings or remedies, or civil action
353 related to any violation of law committed prior to January 1, 2012."

354 **SECTION 6.**

355 (a) Except as otherwise provided in subsection (b) of this section, this Act shall become
356 effective upon its approval by the Governor or upon its becoming law without such
357 approval.

358 (b) Section 5 of this Act shall become effective on January 1, 2012.

359 **SECTION 7.**

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