

COMMITTEE OF CONFERENCE SUBSTITUTE TO HB 1069

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide for income tax credits for certain qualified equipment that reduces
3 business or domestic energy or water usage; to provide for an income tax credit for certain
4 qualified investments for a limited period of time; to provide for legislative findings and
5 intent; to provide for definitions; to provide for procedures, conditions, and limitations; to
6 provide for powers, duties, and authority of the state revenue commissioner with respect to
7 the foregoing; to change certain provisions regarding allocation and prioritization of certain
8 income tax credits for certain clean energy property; to revise and change certain provisions
9 regarding income tax credits for low-income residents, to repeal certain provisions regarding
10 legislative findings and purposes; to change certain provisions regarding the claiming and
11 allowing of such tax credits; to change certain procedures regarding reimposition of the
12 municipal water and sewer projects and costs sales and use tax; to provide effective dates and
13 a contingency; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
17 amended by adding a new Code section to read as follows:

18 "48-7-40.29.

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

20 (1) 'Cost' means the aggregate funds actually invested and expended by a taxpayer to put
21 into service the qualified equipment.

22 (2) 'Energy efficient equipment' means all machinery and equipment certified pursuant
23 to rules and regulations promulgated for purposes of this Code section by the
24 commissioner of natural resources, as effective in reducing business or domestic energy
25 usage. Such certifications may include, by way of example and not limitation, any
26 dishwasher, clothes washer, furnace, air conditioner, central heating and air conditioning

27 system, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat,
28 refrigerator, energy efficient water heater, skylighting system, whole house fan, energy
29 use meter, light-emitting diode lighting system, geothermal heating system, door,
30 window, or window film which has been designated by the United States Environmental
31 Protection Agency and the United States Department of Energy as meeting or exceeding
32 each such agency's energy saving efficiency requirements or which have been designated
33 as meeting or exceeding such requirements under each such agency's Energy Star
34 program.

35 (3) 'Qualified equipment' means energy efficient equipment or water efficient equipment.

36 (4) 'Water efficient equipment' means all machinery and equipment certified pursuant
37 to rules and regulations promulgated for purposes of this Code section by the
38 commissioner of natural resources as effective in reducing business or domestic water
39 usage. Such certifications shall include, by way of example and not limitation, water
40 conservation systems capable of storing rain water or gray water for future use and
41 reusing the collected water for the same residential or commercial property and other
42 products used for the conservation or efficient use of water which have been designated
43 by the United States Environmental Protection Agency as meeting or exceeding such
44 agency's water saving efficiency requirements or which have been designated as meeting
45 or exceeding such requirements under such agency's Water Sense program.

46 (b) Rules and regulations of the commissioner of natural resources shall establish
47 classifications or categories of qualified equipment, and no item of such qualified
48 equipment shall be included in more than one classification or category for purposes of
49 claiming a tax credit under this Code section. The commissioner of natural resources, may
50 take all reasonable and necessary steps to identify qualified equipment and to bring such
51 equipment to the attention of taxpayers in this state qualified to install such equipment.

52 (c) After the effective date of this Code section, any taxpayer who is the ultimate purchaser
53 of an item of qualified equipment for installation as part of new construction or for retrofit
54 in this state shall be allowed a credit against the tax imposed under this article in the
55 taxable year in which such qualified equipment was placed in service. The amount of the
56 credit allowed under this Code section shall be 25 percent of the cost of the qualified
57 equipment or \$2,500.00, whichever is less.

58 (d) The credit granted under subsection (c) of this Code section shall be subject to the
59 following conditions and limitations:

60 (1) The aggregate amount of credit which shall be claimed and allowed by taxpayers in
61 any taxable year under this Code section shall be limited solely and exclusively to the
62 amount of federal funds granted to the state for purposes of this Code section. In any tax

63 year in which no federal funds are available for such purposes, no credit shall be claimed
64 and allowed under this Code section.

65 (2) A taxpayer that claims a credit allowed under this Code section shall not be eligible
66 to claim such qualified equipment for the clean energy property credit provided in Code
67 Section 48-7-29.14; and

68 (3) To claim a credit allowed by this Code section, the taxpayer shall provide any
69 information required by the Department of Natural Resources or the department. Every
70 taxpayer claiming a credit under this Code section shall maintain and make available for
71 inspection by the Department of Natural Resources or the department any records that
72 either entity considers necessary to determine and verify the amount of the credit to
73 which the taxpayer is entitled. The burden of proving eligibility for a credit and the
74 amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer
75 that fails to maintain adequate records or to make them available for inspection.

76 (e) In no event shall the amount of the tax credit allowed by this Code section for a taxable
77 year exceed the taxpayer's income tax liability. Any unused credit amount shall be allowed
78 to be carried forward for five years from the close of the taxable year in which the qualified
79 equipment was placed in service. No such credit shall be allowed the taxpayer against
80 prior years' tax liability.

81 (f) After the qualified equipment is placed in service, a taxpayer seeking to claim any tax
82 credit provided for under this Code section must submit an application to the commissioner
83 for tentative approval of such tax credit. The commissioner shall promulgate the rules and
84 forms on which the application is to be submitted. The commissioner shall review such
85 application and shall tentatively approve such application upon determining that it meets
86 the requirements of this Code section within 60 days after receiving such application.

87 (g) The commissioner shall allow the tax credits on a first come, first served basis. In no
88 event shall the aggregate amount of tax credits approved by the commissioner for all
89 taxpayers under this Code section exceed the amount of federal funds granted to the state
90 for purposes of this Code section.

91 (h) The Department of Natural Resources and the department shall be authorized to adopt
92 rules and regulations to provide for the administration of the tax credit provided by this
93 Code section. Specifically, the Department of Natural Resources and the department shall
94 create a mechanism to track and report the status and availability of credits for the public
95 to review at a minimum on a quarterly basis."

SECTION 2.

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

"48-7-40.30.

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

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

(2) To enlarge the number of high quality, high paying jobs within the state both to attract qualified individuals to move to and work within this state and to retain young people educated in Georgia's universities and colleges;

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

(4) To support businesses seeking to commercialize technology invented in Georgia's universities and colleges.

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

(1) 'Allowable credit' means the credit as it may be reduced pursuant to subparagraph (3) of subsection (i) of this Code section.

(2) 'Headquarters' means the principal central administrative office of a business located in this state which conducts significant operations of such business.

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

(4) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(5) 'Professional services' means those services specified in paragraph (2) of Code Section 14-7-2 or any service which requires as a condition precedent to the rendering of such service the obtaining of a license from a state licensing board pursuant to Title 43.

(6) 'Qualified business' means a registered business that:

(A) Is either a corporation, limited liability company, or a general or limited partnership located in this state;

(B) Was organized no more than three years before the qualified investment was made;

(C) Has its headquarters located in this state at the time the investment was made and has maintained such headquarters for the entire time the qualified business benefitted from the tax credit provided for pursuant to this Code section;

(D) Employs 20 or fewer people in this state at the time it is registered as a qualified business;

131 (E) Has had in any complete fiscal year before registration gross annual revenue as
 132 determined in accordance with the Internal Revenue Code of \$500,000.00 or less on a
 133 consolidated basis;

134 (F) Has not obtained during its existence more than \$1 million in aggregate gross cash
 135 proceeds from the issuance of its equity or debt investments, not including commercial
 136 loans from chartered banking or savings and loan institutions;

137 (G) Has not utilized the tax credit described in Code Section 48-7-40.26;

138 (H) Is primarily engaged in manufacturing, processing, online and digital warehousing,
 139 online and digital wholesaling, software development, information technology services,
 140 research and development, or a business providing services other than those described
 141 in subparagraph (I) of this paragraph; and

142 (I) Does not engage substantially in:

143 (i) Retail sales;

144 (ii) Real estate or construction;

145 (iii) Professional services;

146 (iv) Gambling;

147 (v) Natural resource extraction;

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

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

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

156 (7) 'Qualified investment' means an investment by a qualified investor of cash in a
 157 qualified business for common or preferred stock or an equity interest or a purchase for
 158 cash of qualified subordinated debt in a qualified business; provided, however, that funds
 159 constituting a qualified investment cannot have been raised or be raised as a result of
 160 other tax incentive programs. Furthermore, no investment of common or preferred stock
 161 or an equity interest or purchase of subordinated debt shall qualify as a qualified
 162 investment if a broker fee or commission or a similar remuneration is paid or given
 163 directly or indirectly for soliciting such investment or purchase.

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

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

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

173 (9) 'Qualified subordinated debt' means indebtedness that is not secured, that may or may
174 not be convertible into common or preferred stock or other equity interest, and that is
175 subordinated in payment to all other indebtedness of the qualified business issued or to
176 be issued for money borrowed and no part of which has a maturity date less than five
177 years after the date such indebtedness was purchased.

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

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

185 (d) Any individual person making a qualified investment directly in a qualified business
186 in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 35 percent of the
187 amount invested against the tax imposed by this chapter commencing on January 1 of the
188 second year following the year in which the qualified investment was made as provided in
189 this Code section.

190 (e) Any pass-through entity making a qualified investment directly in a qualified business
191 in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 35 percent of the
192 amount invested against the tax imposed by this chapter commencing on January 1 of the
193 second year following the year in which the qualified investment was made as provided in
194 this Code section. Each individual who is a shareholder, partner, or member of an entity
195 shall be allocated the credit allowed the pass-through entity in an amount determined in the
196 same manner as the proportionate shares of income or loss of such pass-through entity
197 would be determined. If an individual's share of the pass-through entity's credit is limited
198 due to the maximum allowable credit under this Code section for a taxable year, the
199 pass-through entity and its owners may not reallocate the unused credit among the other
200 owners.

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

203 (1) The qualified investor is not eligible for the credit for the taxable year in which the
204 qualified investment is made but shall be eligible for the credit for the second taxable

205 year beginning after the qualified investment is made as provided in subsection (d) or (e)
206 of this Code section;

207 (2) The aggregate amount of credit allowed an individual for one or more qualified
208 investments in a single taxable year under this Code section, whether made directly or by
209 a pass-through entity and allocated to such individual, shall not exceed \$50,000.00;

210 (3) In no event shall the amount of the tax credit allowed an individual under this Code
211 section for a taxable year exceed such individual's net income tax liability. Any unused
212 credit amount shall be allowed to be carried forward for five years from the close of the
213 taxable year in which the qualified investment was made. No such credit shall be allowed
214 against prior years' tax liability;

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

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

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

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

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

231 (2) A registration as a qualified business may not be sold or otherwise transferred, except
232 that, if a qualified business enters into a merger, conversion, consolidation, or other
233 similar transaction with another business and the surviving company would otherwise
234 meet the criteria for being a qualified business, the surviving company retains the
235 registration for the 12 month registration period without further application to the
236 commissioner. In such a case, the qualified business must provide the commissioner with
237 written notice of the merger, conversion, consolidation, or similar transaction and such
238 other information as required by the commissioner; and

239 (3) The commissioner shall report to the House Committee on Ways and Means and the
240 Senate Finance Committee each year all of the businesses that have registered with the
241 commissioner as a qualified business. The report shall include the name and address of

242 each business, the location of its headquarters, a description of the types of business in
243 which it engages, the number of jobs created by the business during the period covered
244 by the report, and the average wages paid by these jobs.

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

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

250 (A) The death of the qualified investor;

251 (B) A transfer to the spouse of the qualified investor or incident to divorce; or

252 (C) A merger, conversion, consolidation, sale of the qualified business's assets, or
253 similar transaction requiring approval by the owners of the qualified business under
254 applicable law, to the extent the qualified investor does not receive cash or tangible
255 property in such merger, conversion, consolidation, sale, or other similar transaction;

256 (2) Except as provided in paragraph (1) of this subsection, if within five years after the
257 qualified investment was made, the qualified business makes a redemption with respect
258 to the securities received or pays any principal of the subordinated debt;

259 (3) If within two years after the qualified investment was made, the qualified investor
260 participates in the operation of the qualified business. For the purpose of this paragraph,
261 a qualified investor participates in the operation of a qualified business if the qualified
262 investor, or the qualified investor's spouse, parent, sibling, or child, or a business
263 controlled by any of these individuals, provides services of any nature to the qualified
264 business for compensation, whether as an employee, a contractor, or otherwise.
265 However, a person who provides uncompensated professional advice to a qualified
266 business whether as an officer, a member of the board of directors or managers or
267 otherwise or participates in a stock or membership option or stock or membership plan,
268 or both, shall be eligible for the credit;

269 (4) The amount of the credit recaptured shall apply only to the qualified investment in
270 the particular qualified business in which the investment was made;

271 (5) The amount of the recaptured tax credit determined under this subsection shall be
272 added to the qualified investor's income tax liability for the taxable year in which the
273 recapture occurs under this subsection; and

274 (6) In the event the credit is recaptured because the qualified business ceases business
275 operations, dissolves, or liquidates, the qualified investor may claim either the credit
276 authorized under this Code section or any capital loss the qualified investor otherwise
277 would be able to claim regarding that qualified business, but shall not be authorized to
278 claim and be allowed both.

279 (i)(1) A qualified investor seeking to claim a tax credit provided for under this Code
 280 section must submit an application to the commissioner for tentative approval of such tax
 281 credit between September 1 and October 31 of the year for which the tax credit is claimed
 282 or allowed. The commissioner shall promulgate the rules and forms on which the
 283 application is to be submitted. Amounts specified on such application shall not be
 284 changed by the qualified investor after the application is approved by the commissioner.
 285 The commissioner shall review such application and shall tentatively approve such
 286 application upon determining that it meets the requirements of this Code section.

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

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

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

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

298 (3) The commissioner shall notify each qualified investor of the tax credits tentatively
 299 approved and allocated to such qualified investor by December 31 of the year in which
 300 the application was submitted. In the event that the credit amounts on the tax credit
 301 applications filed with the commissioner exceed the maximum aggregate limit of tax
 302 credits under this subsection, then the tax credits shall be allocated among the qualified
 303 investors who filed a timely application on a pro rata basis based upon the amounts
 304 otherwise allowed by this Code section. Once the tax credit application has been
 305 approved and the amount approved has been communicated to the applicant, the qualified
 306 investor may then apply the amount of the approved tax credit to its tax liability for the
 307 tax year for which the approved application applies.

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

310 **SECTION 3.**

311 Said title is further amended in Code Section 48-7-29.14, relating to the income tax credit
 312 for certain clean energy property, by revising subparagraph (b)(4)(B) as follows:

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

314 In no event shall the aggregate amount of tax credits approved by the commissioner for

315 all taxpayers under this Code section in a calendar year exceed the limitations specified
 316 in paragraph (3) of this subsection. In the event a taxpayer filed a timely application
 317 for such credit but is not allowed all or part of the credit amount to which such taxpayer
 318 would be authorized to receive because the limitations specified in paragraph (3) of this
 319 subsection have reached, such taxpayer may reapply in the following taxable year for
 320 a tax credit for those same eligible costs, and in such event, that taxpayer shall have
 321 priority over other taxpayers for credit allocation in the year of such reapplication;”

322 **SECTION 4.**

323 Said title is further amended by repealing and reserving Code Section 48-7A-1, relating to
 324 legislative findings and purposes regarding income tax credits for low-income residents.

325 **SECTION 5.**

326 Said title is further amended in Code Section 48-7A-3, relating to claiming and allowing
 327 low-income tax credits, by revising subsections (a) and (c) as follows:

328 “(a) Except as otherwise provided in subsection (e) of this Code section, each resident
 329 taxpayer who files an individual income tax return for a taxable year and who is not
 330 claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for
 331 federal or Georgia individual income tax purposes may claim a tax credit against the
 332 resident taxpayer's individual income tax liability for the taxable year for which the
 333 individual income tax return is being filed; provided that:

334 (1) A husband and wife filing a joint return shall each be deemed a dependent for
 335 purposes of such joint return; and

336 (2) A husband and wife filing separate returns for a taxable year for which a joint return
 337 could have been filed by them shall claim only the tax credit to which they would have
 338 been entitled had a joint return been filed; ~~and~~

339 ~~(3) A resident individual who has no income or no income taxable under Chapter 7 of~~
 340 ~~this title and who is not claimed or is not otherwise eligible to be claimed as a dependent~~
 341 ~~by a taxpayer for federal or Georgia individual income tax purposes may also claim a tax~~
 342 ~~credit as set forth in this Code section.”~~

343 “(c) The tax credit claimed by a resident taxpayer pursuant to this Code section shall be
 344 deductible from the resident taxpayer's individual income tax liability, if any, for the tax
 345 year in which it is properly claimed. ~~In the event the tax credit claimed by a resident~~
 346 ~~taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the~~
 347 ~~excess of the credit over payments due shall be refunded to the resident taxpayer, provided~~
 348 ~~that a tax credit properly claimed by a resident individual who has no income tax liability~~
 349 ~~shall be paid to the resident individual, provided, further, that no refunds or payment on~~

350 ~~account of the tax credit allowed by this Code section shall be made for amounts less than~~
 351 ~~\$1.00.; provided, however, that in no event shall the total amount of the tax credit under~~
 352 ~~this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused~~
 353 ~~credit amount shall not be allowed to be carried forward to the taxpayer's succeeding years'~~
 354 ~~tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability."~~

355 **SECTION 6.**

356 Said title is further amended in Code Section 48-8-203, relating to discontinuance of the
 357 water and sewer projects and costs tax and limitations on its reimposition, by revising
 358 paragraphs (2) and (3) of subsection (c) as follows:

359 "(2) A municipality in which a tax authorized by this article is in effect may, while the
 360 tax is in effect, adopt a resolution or ordinance calling for a reimposition of a tax as
 361 authorized by this article upon the termination of the tax then in effect; and a referendum
 362 may be held for this purpose while the tax is in effect. Proceedings for such reimposition
 363 shall not be conducted more than ~~two~~ three times; shall be in the same manner as
 364 proceedings for the initial imposition of the tax as provided for in Code Section 48-8-202
 365 and shall be solely within the discretion of the governing authority of the municipality
 366 without regard to any requirement of county participation otherwise specified under
 367 subsection (a) of Code Section 48-8-201. Such newly authorized tax shall not be imposed
 368 until the expiration of the tax then in effect; provided, however, that in the event of
 369 emergency conditions under which a municipality is unable to conduct a referendum so
 370 as to continue the tax then in effect without interruption, the commissioner may, if
 371 feasible administratively, waive the limitations of subsection (a) of this Code section to
 372 the minimum extent necessary so as to permit the reimposition of a tax, if otherwise
 373 approved as required under this Code section, without interruption, upon the expiration
 374 of the tax then in effect.

375 (3) Following the expiration of a tax under this article which has been renewed ~~two~~ three
 376 times under paragraph (2) of this subsection, a municipality shall not be authorized to
 377 initiate proceedings for the reimposition of a tax under this article or to reimpose such
 378 tax."

379 **SECTION 7.**

380 (a) Except as otherwise provided in subsections (b) and (c) of this section, this Act shall
 381 become effective upon its approval by the Governor or upon its becoming law without such
 382 approval. Sections 3, 4, and 5 of this Act shall be applicable to all taxable years beginning
 383 on or after January 1, 2010.

384 (b) Section 2 of this Act shall become effective on January 1, 2011.

385 (c) Section 1 of this Act shall become effective on January 1 of the year following the year
386 in which federal funds are made available for the purpose of funding the credit provided by
387 Section 1 of this Act and in which the state auditor certifies in writing to the commissioner
388 of natural resources and the state revenue commissioner that such funds have been received,
389 have been deposited in the general fund, and are available for purposes of Section 1 of this
390 Act.

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SECTION 8.

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