

House Bill 1069 (AS PASSED HOUSE AND SENATE)

By: Representatives Wilkinson of the 52nd, Porter of the 143rd, Lindsey of the 54th, Hugley of the 133rd, Stephens of the 164th, and others

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2.

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;

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

(F) 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;

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

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

(I) Does not engage substantially in:

(i) Retail sales;

(ii) Real estate or construction;

(iii) Professional services;

(iv) Gambling;

(v) Natural resource extraction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The death of the qualified investor;

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

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

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

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

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

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

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

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

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

(A) The total aggregate amount of all tax credits allowed to qualified 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;

(B) The total aggregate amount of all tax credits allowed to qualified 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; and

(C) The total aggregate amount of all tax credits allowed to qualified 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.

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

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

SECTION 3.

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

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

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

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

SECTION 4.

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

SECTION 5.

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

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

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

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

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

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

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

SECTION 6.

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

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

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

SECTION 7.

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

(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.

391 **SECTION 8.**

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