

House Bill 439

By: Representatives O`Neal of the 146<sup>th</sup> and Stephens of the 164<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to imposition, rate, computation, and exemptions regarding income taxes, so as to  
3 provide for the comprehensive revision of income tax credits for business enterprises in less  
4 developed areas, employers providing approved retraining, business enterprises having  
5 qualified research expenses, base year port traffic, and taxpayers establishing or relocating  
6 headquarters into this state; to provide for procedures, conditions, and limitations; to provide  
7 an effective date; to provide for applicability; to repeal conflicting laws; and for other  
8 purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

11 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
12 imposition, rate, computation, and exemptions regarding income taxes, is amended by  
13 revising Code Section 48-7-40, relating to tax credits for business enterprises in less  
14 developed areas, to read as follows:

15 "48-7-40.

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

17 (1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other  
18 programming content to the general public, subscribers, or to third parties via radio,  
19 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture  
20 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'  
21 is limited to establishments classified under the ~~2007~~ 2002 North American Industry  
22 Classification System Codes 515, broadcasting; 516, Internet publishing and  
23 broadcasting; 517, telecommunications; and 512, motion picture and sound recording  
24 industries.

25 (2) 'Business enterprise' means any business or the headquarters of any such business  
 26 which is engaged in manufacturing, warehousing and distribution, processing,  
 27 telecommunications, broadcasting, tourism, and research and development industries.  
 28 Such term shall not include retail businesses.

29 (3) 'Competitive project' means expansion or location of some or all of a business  
 30 enterprise's operations in this state having significant regional impact where the  
 31 commissioner of economic development certifies that but for some or all of the tax  
 32 incentives provided in this Code section, the business enterprise would have located or  
 33 expanded outside this state.

34 ~~(3)~~(4) 'Existing business enterprise' means any business or the headquarters of any such  
 35 business which has operated for the immediately preceding three years a facility in this  
 36 state which is engaged in manufacturing, warehousing and distribution, processing,  
 37 telecommunications, broadcasting, tourism, or research and development industries.  
 38 Such term shall not include retail businesses.

39 (b)(1) Not later than December 31 of each year, using the most current data available  
 40 from the Department of Labor and the United States Department of Commerce, the  
 41 commissioner of community affairs shall rank and designate as less developed areas all  
 42 159 counties in this state using a combination of the following equally weighted factors:

- 43 (A) Highest unemployment rate for the most recent 36 month period;
- 44 (B) Lowest per capita income for the most recent 36 month period; and
- 45 (C) Highest percentage of residents whose incomes are below the poverty level  
 46 according to the most recent data available.

47 (2) Counties ranked and designated as the first through seventy-first least developed  
 48 counties shall be classified as tier 1, counties ranked and designated as the  
 49 seventy-second through one hundred sixth least developed counties shall be classified as  
 50 tier 2, counties ranked and designated as the one hundred seventh through one hundred  
 51 forty-first least developed counties shall be classified as tier 3, and counties ranked and  
 52 designated as the one hundred forty-second through one hundred fifty-ninth least  
 53 developed counties shall be classified as tier 4.

54 (c) The commissioner of community affairs shall be authorized to include in the tier 2  
 55 designation provided for in subsection (b) of this Code section any tier 3 county which, in  
 56 the opinion of the commissioner of community affairs, undergoes a sudden and severe  
 57 period of economic distress caused by the closing of one or more business enterprises  
 58 located in such county. No designation made pursuant to this subsection shall operate to  
 59 displace or remove any other county previously designated as a tier 2 county.

60 (c.1) The commissioner of community affairs shall be authorized to include in the tier 1  
 61 designation provided for in subsection (b) of this Code section any tier 2 county which, in

62 the opinion of the commissioner of community affairs, undergoes a sudden and severe  
63 period of economic distress caused by the closing of one or more business enterprises  
64 located in such county. No designation made pursuant to this subsection shall operate to  
65 displace or remove any other county previously designated as a tier 1 county.

66 (d) For business enterprises which plan a significant expansion in their labor forces, the  
67 commissioner of community affairs shall prescribe redesignation procedures to ensure that  
68 the business enterprises can claim credits in future years without regard to whether or not  
69 a particular county is reclassified in a different tier.

70 (e)(1) Business enterprises in counties designated by the commissioner of community  
71 affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article  
72 equal to \$3,500.00 annually per eligible new full-time employee job for five years  
73 beginning with ~~years two through six after the creation of such job~~ the first taxable year  
74 in which the new full-time employee job is created and for the four immediately  
75 succeeding taxable years; provided, however, that where the amount of such credit  
76 exceeds a business enterprise's liability for such taxes in a taxable year, the excess may  
77 be taken as a credit against such business enterprise's quarterly or monthly payment under  
78 Code Section 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new  
79 full-time employee job when aggregated with the credit applied against taxes under this  
80 article. Each employee whose employer receives credit against such business enterprise's  
81 quarterly or monthly payment under Code Section 48-7-103 shall receive credit against  
82 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable  
83 year for the full amount which would be credited against such liability prior to the  
84 application of the credit provided for in this paragraph. Credits against quarterly or  
85 monthly payments under Code Section 48-7-103 and credits against liability under Code  
86 Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer.  
87 Business enterprises in counties designated by the commissioner of community affairs  
88 as tier 2 counties shall be allowed a job tax credit for taxes imposed under this article  
89 equal to \$2,500.00 annually, business enterprises in counties designated by the  
90 commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for  
91 taxes imposed under this article equal to \$1,250.00 annually, and business enterprises in  
92 counties designated by the commissioner of community affairs as tier 4 counties shall be  
93 allowed a job tax credit for taxes imposed under this article equal to \$750.00 annually for  
94 each new full-time employee job for five years beginning with ~~years two through six after~~  
95 ~~the creation of the job~~ the first taxable year in which the new full-time employee job is  
96 created and for the four immediately succeeding taxable years. Where a business  
97 enterprise is engaged in a competitive project located in a county designated by the  
98 commissioner of community affairs as a tier 2, tier 3, or tier 4 county, and where the

99 amount of the credit provided in this paragraph exceeds such business enterprise's  
100 liability for taxes imposed under this article in a taxable year, the excess may be taken as  
101 a credit against such business enterprise's quarterly or monthly payment under Code  
102 Section 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new  
103 full-time employee job when aggregated with the credit applied against taxes under this  
104 article. Each employee whose employer receives credit against such business enterprise's  
105 quarterly or monthly payment under Code Section 48-7-103 shall receive credit against  
106 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable  
107 year for the full amount which would be credited against such liability prior to the  
108 application of the credit provided for in this paragraph. Credits against quarterly or  
109 monthly payments under Code Section 48-7-103 and credits against liability under Code  
110 Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer.  
111 The number of new full-time jobs shall be determined by comparing the monthly average  
112 number of full-time employees subject to Georgia income tax withholding for the taxable  
113 year with the corresponding period of the prior taxable year. In tier 1 counties, those  
114 business enterprises that increase employment by five or more shall be eligible for the  
115 credit. In tier 2 counties, only those business enterprises that increase employment by ten  
116 or more shall be eligible for the credit. In tier 3 counties, only those business enterprises  
117 that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties,  
118 only those business enterprises that increase employment by 25 or more shall be eligible  
119 for the credit. The average wage of the new jobs created must be above the average wage  
120 of the county that has the lowest average wage of any county in the state to qualify as  
121 reported in the most recently available annual issue of the Georgia Employment and  
122 Wages Averages Report of the Department of Labor. To qualify for a credit under this  
123 paragraph, the employer must make health insurance coverage available to the employee  
124 filling the new full-time job; provided, however, that nothing in this paragraph shall be  
125 construed to require the employer to pay for all or any part of health insurance coverage  
126 for such an employee in order to claim the credit provided for in this paragraph if such  
127 employer does not pay for all or any part of health insurance coverage for other  
128 employees. Credit shall not be allowed during a year if the net employment increase falls  
129 below the number required in such tier. ~~Any credit received for years prior to the year~~  
130 ~~in which the net employment increase falls below the number required in such tier shall~~  
131 ~~not be affected.~~ In any year in which the net employment increase falls below the  
132 number required in such tier, the taxpayer shall forfeit the right to 20 percent of the credit  
133 claimed in each prior year for each year that the net employment increase falls below the  
134 number required in such tier. For each year that the net employment increase falls below  
135 the number required in such tier, a taxpayer that forfeits such right is therefore liable for

136 20 percent of all past taxes imposed by this article and all past payments under Code  
137 Section 48-7-103 that were foregone by the state as a result of the credits provided by this  
138 Code section, plus interest at the rate established by Code Section 48-2-40 computed  
139 from the date such taxes or payments would have been due if the credits had not been  
140 taken. The taxpayer shall file amended income tax and withholding tax returns for all  
141 affected periods that recalculate those liabilities without regard to the forfeited credits and  
142 shall pay any additional amounts shown on such returns, with interest as provided herein  
143 this paragraph. The state revenue commissioner shall adjust the credit allowed each year  
144 for net new employment fluctuations above the minimum level of the number required  
145 in such tier.

146 (2) Existing business enterprises shall be allowed an additional tax credit for taxes  
147 imposed under this article equal to \$500.00 per eligible new full-time employee job for  
148 ~~one year after the creation of such job~~ the first year in which the new full-time employee  
149 job is created. The additional credit shall be claimed in ~~year two after the creation of~~  
150 ~~such job~~ the first taxable year in which the new full-time employee job is created. The  
151 number of new full-time jobs shall be determined by comparing the monthly average  
152 number of full-time employees subject to Georgia income tax withholding for the taxable  
153 year with the corresponding period of the prior taxable year. In tier 1 counties, those  
154 existing business enterprises that increase employment by five or more shall be eligible  
155 for the credit. In tier 2 counties, only those existing business enterprises that increase  
156 employment by ten or more shall be eligible for the credit. In tier 3 counties, only those  
157 existing business enterprises that increase employment by 15 or more shall be eligible for  
158 the credit. In tier 4 counties, only those existing business enterprises that increase  
159 employment by 25 or more shall be eligible for the credit. The average wage of the new  
160 jobs created must be above the average wage of the county that has the lowest average  
161 wage of any county in the state to qualify as reported in the most recently available  
162 annual issue of the Georgia Employment and Wages Averages Report of the Department  
163 of Labor. To qualify for a credit under this paragraph, the employer must make health  
164 insurance coverage available to the employee filling the new full-time job; provided,  
165 however, that nothing in this paragraph shall be construed to require the employer to pay  
166 for all or any part of health insurance coverage for such an employee in order to claim the  
167 credit provided for in this paragraph if such employer does not pay for all or any part of  
168 health insurance coverage for other employees. Credit shall not be allowed during a year  
169 if the net employment increase falls below the number required in such tier. Any credit  
170 ~~received~~ generated and utilized for years prior to the year in which the net employment  
171 increase falls below the number required in such tier shall not be affected. The state  
172 revenue commissioner shall adjust the credit allowed each year for net new employment

173 fluctuations above the minimum level of the number required in such tier. This  
174 paragraph shall apply only to new eligible full-time jobs created in taxable years  
175 beginning on or after January 1, 2006, and ending no later than taxable years beginning  
176 prior to January 1, 2011.

177 (f) Tax credits for ~~five~~ four years for the taxes imposed under this article shall be awarded  
178 for additional new full-time jobs created by business enterprises qualified under subsection  
179 (b), (c), or (c.1) of this Code section. Additional new full-time jobs shall be determined by  
180 subtracting the highest total employment of the business enterprise during years two  
181 through ~~six~~ five, or whatever portion of years two through ~~six~~ five which has been  
182 completed, from the total increased employment. The state revenue commissioner shall  
183 adjust the credit allowed in the event of employment fluctuations during the ~~additional~~ five  
184 years of credit.

185 (g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create  
186 new eligibility in any succeeding business entity, but any unused job tax credit may be  
187 transferred and continued by any transferee of the business enterprise. The commissioner  
188 of community affairs shall determine whether or not qualifying net increases or decreases  
189 have occurred and may require reports, promulgate regulations, and hold hearings as  
190 needed for substantiation and qualification.

191 (h)(1) Except as provided in paragraph (2) of this subsection, any credit claimed under  
192 this Code section but not used in any taxable year may be carried forward for ten years  
193 from the close of the taxable year in which the qualified jobs were established, subject  
194 to forfeiture as provided in paragraph (1) of subsection (e) of this Code section, but in  
195 tiers 3 and 4 the credit established by this Code section taken in any one taxable year  
196 shall be limited to an amount not greater than 50 percent of the taxpayer's state income  
197 tax liability which is attributable to income derived from operations in this state for that  
198 taxable year. In tier 1 and 2 counties, the credit allowed under this Code section against  
199 taxes imposed under this article in any taxable year shall be limited to an amount not  
200 greater than 100 percent of the taxpayer's state income tax liability attributable to income  
201 derived from operations in this state for such taxable year.

202 (2) The additional credit claimed by an existing business enterprise pursuant to the  
203 provisions of paragraph (2) of subsection (e) of this Code section must be applied against  
204 taxes imposed for the taxable year in which such credit is available and may not be  
205 carried forward to any subsequent taxable year.

206 (i) Notwithstanding any provision of this Code section to the contrary, in counties  
207 recognized and designated as the first through fortieth least developed counties in the tier  
208 1 designation, job tax credits shall be allowed as provided in this Code section, in addition  
209 to business enterprises or existing business enterprises, to any business of any nature.

210 (j) Business enterprises eligible to claim a credit under this Code section shall claim the  
 211 credit no later than one year after the date the original tax return was filed or within one  
 212 year of the due date of the tax return including extensions, whichever comes first.

213 ~~(j)~~(k) The commissioner may require such reports, promulgate such regulations, and gather  
 214 such relevant data necessary and advisable for the evaluation of the job tax credits  
 215 established by this Code section."

216 **SECTION 2.**

217 Said article is further amended by revising Code Section 48-7-40.1, relating to tax credits for  
 218 business enterprises in less developed areas, to read as follows:

219 "48-7-40.1.

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

221 (1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other  
 222 programming content to the general public, subscribers, or to third parties via radio,  
 223 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture  
 224 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'  
 225 is limited to establishments classified under the ~~2007~~ 2002 North American Industry  
 226 Classification System Codes 515, broadcasting; 516, Internet publishing and  
 227 broadcasting; 517, telecommunications; and 512, motion picture and sound recording  
 228 industries.

229 (2) 'Business enterprise' means any business or the headquarters of any such business  
 230 which is engaged in manufacturing, warehousing and distribution, processing,  
 231 telecommunications, broadcasting, tourism, and research and development industries.  
 232 Such term shall not include retail businesses.

233 (b) Not later than December 31 of each year, using the most current data available from  
 234 the Department of Labor and the United States Department of Commerce, the  
 235 commissioner of community affairs shall rank and designate as less developed areas the  
 236 areas which are comprised of ten or more contiguous census tracts in this state using a  
 237 combination of the following equally weighted factors:

238 (1) Highest unemployment rate for the most recent 36 month period;

239 (2) Lowest per capita income for the most recent 36 month period; and

240 (3) Highest percentage of residents whose income is below the poverty level according  
 241 to the most recent data available.

242 (c) The commissioner of community affairs also shall be authorized to include in the  
 243 designation provided for in subsection (b) of this Code section:

244 (1) Any area comprised of ten or more contiguous census tracts which, in the opinion of  
 245 the commissioner of community affairs, undergoes a sudden and severe period of

246 economic distress caused by the closing of one or more business enterprises located in  
247 such area;

248 (2) Any area comprised of one or more census tracts adjacent to a federal military  
249 installation where pervasive poverty is evidenced by a 15 percent poverty rate or greater  
250 as reflected in the most recent decennial census;

251 (3) Any area comprised of one or more contiguous census tracts which, in the opinion  
252 of the commissioner of community affairs, is or will be adversely impacted by the loss  
253 of one or more jobs, businesses, or residences as a result of an airport expansion,  
254 including noise buy-outs, or the closing of a business enterprise which, in the opinion of  
255 the commissioner of community affairs, results or will result in a sudden and severe  
256 period of economic distress; or

257 (4) Any area which is within or adjacent to one or more contiguous census block groups  
258 with a poverty rate of 15 percent or greater as determined from data in the most current  
259 United States decennial census, where the area is also included within a state enterprise  
260 zone pursuant to Chapter 88 of Title 36 or where a redevelopment plan has been adopted  
261 pursuant to Chapter 61 of Title 36 and which, in the opinion of the commissioner of  
262 community affairs, displays pervasive poverty, underdevelopment, general distress, and  
263 blight.

264 No designation made pursuant to this subsection shall operate to displace or remove any  
265 other area previously designated as a less developed area. Notwithstanding any provision  
266 of this Code section to the contrary, in areas designated as suffering from pervasive poverty  
267 under this subsection, job tax credits shall be allowed as provided in this Code section, in  
268 addition to business enterprises, to any lawful business.

269 (d) For business enterprises which plan a significant expansion in their labor forces, the  
270 commissioner of community affairs shall prescribe redesignation procedures to ensure that  
271 the business enterprises can claim credits in future years without regard to whether or not  
272 a particular area is removed from the list of less developed areas.

273 (e) Business enterprises in areas designated by the commissioner of community affairs as  
274 less developed areas shall be allowed a job tax credit for taxes imposed under this article  
275 equal to \$3,500.00 annually per eligible new full-time employee job for five years  
276 beginning with ~~years two through six after the creation of such job~~ the first taxable year in  
277 which the new full-time employee job is created and for the four immediately succeeding  
278 taxable years; provided, however, that where the amount of such credit exceeds a business  
279 enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit  
280 against such business enterprise's quarterly or monthly payment under Code Section  
281 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new full-time  
282 employee job when aggregated with the credit applied against taxes under this article.

283 Each employee whose employer receives credit against such business enterprise's quarterly  
284 or monthly payment under Code Section 48-7-103 shall receive credit against his or her  
285 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the  
286 full amount which would be credited against such liability prior to the application of the  
287 credit provided for in this subsection. Credits against quarterly or monthly payments under  
288 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established  
289 by this subsection shall not constitute income to the taxpayer. The number of new full-time  
290 jobs shall be determined by comparing the monthly average number of full-time employees  
291 subject to Georgia income tax withholding for the taxable year with the corresponding  
292 period of the prior taxable year. Only those business enterprises that increase employment  
293 by five or more in a less developed area shall be eligible for the credit; provided, however,  
294 that within areas of pervasive poverty as designated under paragraphs (2) and (4) of  
295 subsection (c) of this Code section businesses shall only have to increase employment by  
296 two or more jobs in order to be eligible for the credit, provided that, if a business only  
297 increases employment by two jobs, the persons hired for such jobs shall not be married to  
298 one another. The average wage of the new jobs created must be above the average wage  
299 of the county that has the lowest wage of any county in the state to qualify as reported in  
300 the most recently available annual issue of the Georgia Employment and Wages Averages  
301 Report of the Department of Labor. To qualify for a credit under this subsection, the  
302 employer must make health insurance coverage available to the employee filling the new  
303 full-time job; provided, however, that nothing in this subsection shall be construed to  
304 require the employer to pay for all or any part of health insurance coverage for such an  
305 employee in order to claim the credit provided for in this subsection if such employer does  
306 not pay for all or any part of health insurance coverage for other employees. Credit shall  
307 not be allowed during a year if the net employment increase falls below five or two, as  
308 applicable. ~~Any credit received for years prior to the year in which the net employment~~  
309 ~~increase falls below five or two shall not be affected.~~ In any year in which the net  
310 employment increase falls below five or two, as applicable, the taxpayer shall forfeit the  
311 right to 20 percent of the credit claimed in each prior year for each year that the net  
312 employment increase falls below five or two, as applicable. For each year that the net  
313 employment increase falls below five or two, as applicable, a taxpayer that forfeits such  
314 right is therefore liable for 20 percent of all past taxes imposed by this article and all past  
315 payments under Code Section 48-7-103 that were foregone by the state as a result of the  
316 credits provided by this Code section, plus interest at the rate established by Code Section  
317 48-2-40 computed from the date such taxes or payments would have been due if the credits  
318 had not been taken. The taxpayer shall file amended income tax and withholding tax  
319 returns for all affected periods that recalculate those liabilities without regard to the

320 forfeited credits and shall pay any additional amounts shown on such returns, with interest  
 321 as provided herein. The state revenue commissioner shall adjust the credit allowed each  
 322 year for net new employment fluctuations above the minimum level of five or two.

323 (f) Tax credits for ~~five~~ four years for the taxes imposed under this article shall be awarded  
 324 for additional new full-time jobs created by business enterprises qualified under  
 325 subsection (b) or (c) of this Code section. Additional new full-time jobs shall be  
 326 determined by subtracting the highest total employment of the business enterprise during  
 327 years two through ~~six~~ five, or whatever portion of years two through ~~six~~ five which has  
 328 been completed, from the total increased employment. The state revenue commissioner  
 329 shall adjust the credit allowed in the event of employment fluctuations during the additional  
 330 five years of credit.

331 (g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create  
 332 new eligibility in any succeeding business entity, but any unused job tax credit may be  
 333 transferred and continued by any transferee of the business enterprise. The commissioner  
 334 of community affairs shall determine whether or not qualifying net increases or decreases  
 335 have occurred and may require reports, promulgate regulations, and hold hearings as  
 336 needed for substantiation and qualification.

337 (h) Any credit claimed under this Code section but not used in any taxable year may be  
 338 carried forward for ten years from the close of the taxable year in which the qualified jobs  
 339 were established, subject to forfeiture as provided in subsection (e) of this Code section,  
 340 but the credit established by this Code section taken in any one taxable year shall be limited  
 341 to an amount not greater than 100 percent of the taxpayer's state income tax liability which  
 342 is attributable to income derived from operations in this state for that taxable year.

343 (i) Business enterprises eligible to a claim credit under this Code section shall claim the  
 344 credit no later than one year after the date the original tax return was filed or within one  
 345 year of the due date of the tax return including extensions, whichever comes first."

### 346 **SECTION 3.**

347 Said article is further amended by revising Code Section 48-7-40.5, relating to tax credits for  
 348 employers providing approved retraining programs, to read as follows:

349 "48-7-40.5.

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

351 (1) 'Approved retraining' means ~~employer~~ business enterprise provided or ~~employer~~  
 352 business enterprise sponsored retraining that meets the following conditions:

353 (A) It enhances the functional skills of employees otherwise unable to function  
 354 effectively on the job due to skill deficiencies or who would otherwise be displaced  
 355 because such skill deficiencies would inhibit their utilization of new technology;

356 provided, however, that retraining shall not include any program related to word  
 357 processing software, data base software, presentation software, spreadsheet software,  
 358 e-mail software, personal information management software, or computer operating  
 359 system software;

360 (B) It is approved and certified by the Technical College System of Georgia; and

361 (C) The employer business enterprise does not require the employee to make any  
 362 payment for the retraining, either directly or indirectly through use of forfeiture of leave  
 363 time, vacation time, or other compensable time.

364 (2) 'Business enterprise' means any business or the headquarters of any such business  
 365 which is engaged in manufacturing, warehousing and distribution, processing,  
 366 telecommunications, broadcasting, tourism, or research and development industries.  
 367 Such term shall not include retail businesses.

368 (3) 'Business enterprise provided' refers to approved retraining offered on the premises  
 369 of the business enterprise or on premises approved by the Technical College System of  
 370 Georgia by instructors hired by or employed by a business enterprise.

371 (4) 'Business enterprise sponsored' refers to a contractual arrangement with a school,  
 372 university, college, or other instructional facility which offers approved retraining that  
 373 is paid for by the business enterprise.

374 ~~(2)~~(5) 'Cost of retraining' means direct instructional costs as defined by the Technical  
 375 College System of Georgia including instructor salaries, materials, supplies, and  
 376 textbooks but specifically excluding costs associated with renting or otherwise securing  
 377 space.

378 ~~(3)~~(6) 'Employee' means any employee resident in this state who is employed for at least  
 379 25 hours a week; and who has been continuously employed by the employer business  
 380 enterprise for at least 16 consecutive weeks.

381 ~~(4)~~ 'Employer' means ~~any employer upon whom an income tax is imposed by this~~  
 382 ~~chapter.~~

383 ~~(5)~~ 'Employer provided' refers to ~~approved retraining offered on the premises of the~~  
 384 ~~employer or on premises approved by the Technical College System of Georgia by~~  
 385 ~~instructors hired by or employed by an employer.~~

386 ~~(6)~~ 'Employer sponsored' refers to ~~a contractual arrangement with a school, university,~~  
 387 ~~college, or other instructional facility which offers approved retraining that is paid for by~~  
 388 ~~the employer.~~

389 (b) A tax credit shall be granted to ~~an employer~~ a business enterprise who provides or  
 390 sponsors an approved retraining program in a taxable year. The total amount of the tax  
 391 credit allowed per taxable year per full-time employee ~~amount of the tax credit~~ shall be  
 392 equal to one-half of the costs of retraining per full-time employee, or \$500.00 per full-time

393 employee, whichever is less, for each employee who has successfully completed an  
 394 approved retraining program. ~~No employer may~~ business enterprise shall receive a credit  
 395 if the ~~employer~~ business enterprise requires that the employee reimburse or pay the  
 396 ~~employer~~ business enterprise for the cost of retraining.

397 (c) Any tax credit claimed under this Code section for any taxable year beginning on or  
 398 after January 1, 1998, but not used for any such taxable year may be carried forward for  
 399 ten years from the close of the taxable year in which the tax credit was granted. The tax  
 400 credit granted to any ~~employer~~ business enterprise pursuant to this Code section shall not  
 401 exceed 50 percent of the amount of the taxpayer's income tax liability for the taxable year  
 402 as computed without regard to this Code section. Notwithstanding Code Section 48-2-35,  
 403 any tax credit claimed under this Code section shall be claimed within one year of the date  
 404 the original return was filed or within one year of the date such return was due as  
 405 prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

406 (d) To be eligible to claim the credit granted under this Code section, the ~~employer must~~  
 407 business enterprise shall certify to the department the name of the employee, the course  
 408 work successfully completed by such employee, the name of the provider of the approved  
 409 retraining, and such other information as may be required by the department to ensure that  
 410 credits are only granted to ~~employers~~ business enterprises who provide or sponsor  
 411 approved retraining pursuant to this Code section and that such credits are only granted to  
 412 ~~employers with respect to~~ business enterprises for employees who successfully complete  
 413 such approved retraining. The department shall adopt rules and regulations and forms to  
 414 implement this credit program. The department is expressly authorized and directed to  
 415 work with the Technical College System of Georgia to ensure the proper granting of credits  
 416 pursuant to this Code section.

417 (e) The Technical College System of Georgia is expressly authorized and directed to  
 418 establish such standards as it deems necessary and convenient in approving ~~employer~~  
 419 business enterprise provided and ~~employer~~ business enterprise sponsored retraining  
 420 programs. In establishing such standards, the Technical College System of Georgia shall  
 421 establish required hours of classroom instruction, required courses, certification of teachers  
 422 or instructors, progressive levels of instruction, and standardized measures of employee  
 423 evaluation to determine successful completion of a course of study."

#### 424 **SECTION 4.**

425 Said article is further amended by revising Code Section 48-7-40.12, relating to income tax  
 426 credits for business enterprises having qualified research expenses, to read as follows:

427 "48-7-40.12.

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

429 (1) 'Base amount' means the product of a business enterprise's Georgia ~~taxable net~~  
430 ~~income~~ gross receipts in the current taxable year and the average of the ratios of its  
431 aggregate qualified research expenses to Georgia ~~taxable net income~~ gross receipts for  
432 the preceding three taxable years or 0.300, whichever is less; provided, however, that a  
433 business enterprise need not have had a positive taxable net income for the preceding  
434 three taxable years in order to claim the credit provided in this Code section. For  
435 purposes of this paragraph, 'Georgia gross receipts' shall be the numerator of the gross  
436 receipts factor provided in subsection (d) of Code Section 48-7-31.

437 (2) 'Broadcasting' means the transmission or licensing of audio, video, text, or other  
438 programming content to the general public, subscribers, or to third parties via radio,  
439 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture  
440 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'  
441 is limited to establishments classified under the ~~2007~~ 2002 North American Industry  
442 Classification System Codes 515, broadcasting; 516, Internet publishing and  
443 broadcasting; 517, telecommunications; and 512, motion picture and sound recording  
444 industries.

445 (3) 'Business enterprise' means any business or the headquarters of any such business  
446 which is engaged in manufacturing, warehousing and distribution, processing,  
447 telecommunications, broadcasting, tourism, ~~and~~ or research and development industries.  
448 Such term shall not include retail businesses.

449 (4) 'Qualified research expenses' means qualified research expenses for any business  
450 enterprise as that term is defined in Section 41 of the Internal Revenue Code of 1986, as  
451 amended, except that all wages paid and all purchases of services and supplies must be  
452 for research conducted within the State of Georgia.

453 (b) A tax credit is allowed a business enterprise which has qualified research expenses in  
454 Georgia in a taxable year exceeding a base amount, provided that the business enterprise  
455 for the same taxable year claims and is allowed a research credit under Section 41 of the  
456 Internal Revenue Code of 1986, as amended.

457 (c) The tax credit provided in subsection (b) of this Code section shall be 10 percent of the  
458 excess over the base amount referred to in said subsection.

459 (d) Any unused credit claimed under this Code section may be carried forward ten years  
460 from the close of the taxable year in which the qualified research expenses were made. The  
461 credit taken in any one taxable year shall not exceed 50 percent of the business enterprise's  
462 remaining Georgia net income tax liability after all other credits have been applied.

463 (e) In the first five years of a newly formed business enterprise's operations in this state,  
464 where the amount of a credit claimed under this Code section exceeds a taxpayer's liability  
465 for such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's

466 quarterly or monthly payment under Code Section 48-7-103. Each employee whose  
 467 employer receives credit against such taxpayer's quarterly or monthly payment under Code  
 468 Section 48-7-103 shall receive a credit against his or her income tax liability under Code  
 469 Section 48-7-20 for the corresponding taxable year for the full amount which would be  
 470 credited against such liability prior to the application of the credit provided for in this  
 471 subsection. Credits against quarterly or monthly payments under Code Section 48-7-103  
 472 and credits against liability under Code Section 48-7-20 established by this subsection shall  
 473 not constitute income to the taxpayer."

474 **SECTION 5.**

475 Said article is further amended in Code Section 48-7-40.15, relating to alternative tax credits  
 476 for base year port traffic, by revising paragraphs (1) and (5) of subsection (a) as follows:

477 "(1) 'Base year port traffic' means:

478 (A) For taxable years beginning prior to January 1, 2010, the total amount of net tons,  
 479 containers, or twenty-foot equivalent units (TEU's); of product actually transported by  
 480 way of a waterborne ship or vehicle through a port facility during the period from  
 481 January 1, 1997, through December 31, 1997; provided, however, that in the event the  
 482 total amount actually transported during such period was not at least 75 net tons, five  
 483 containers, or ten twenty-foot equivalent units (TEU's), then 'base year port traffic'  
 484 means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU's).

485 (B) For all taxable years beginning on or after January 1, 2010, the total amount of net  
 486 tons, containers, or twenty-foot equivalent units (TEU's) of product actually imported  
 487 into this state or exported out of this state by way of a waterborne ship or vehicle  
 488 through a port facility during the immediately preceding calendar year; provided,  
 489 however, that in the event the total amount actually imported into this state or exported  
 490 out of this state during such period was not at least 75 net tons, five containers, or ten  
 491 twenty-foot equivalent units (TEU's), then 'base year port traffic' means 75 net tons,  
 492 five containers, or ten twenty-foot equivalent units (TEU's)."

493 "(5) 'Port traffic' means:

494 (A) For taxable years beginning prior to January 1, 2010, the total amount of net tons,  
 495 containers, or twenty-foot equivalent units (TEU's) of product transported by way of  
 496 a waterborne ship or vehicle through a port facility.

497 (B) For all taxable years beginning on or after January 1, 2010, the total amount of net  
 498 tons, containers, or twenty-foot equivalent units (TEU's) of product imported into this  
 499 state or exported out of this state by way of a waterborne ship or vehicle through a port  
 500 facility."

501 **SECTION 6.**

502 Said article is further amended by revising Code Section 48-7-40.17, relating to income tax  
 503 credits for establishing or relocating headquarters into this state, to read as follows:

504 "48-7-40.17.

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

506 (1) 'Average wage' means the average wage of the county in which a full-time new  
 507 quality job is located as reported in the most recently available annual issue of the  
 508 Georgia Employment and Wages Averages Report of the Department of Labor.

509 (2) 'Full-time New quality job' means employment for an individual which:

510 (A) Is located at a headquarters in this state;

511 (B) Has a regular work week of 30 hours or more;

512 (C) Is not a job that is or was already located in Georgia regardless of which taxpayer  
 513 the individual performed services for;

514 ~~(C)~~(D) Pays at or above 110 percent of the average wage of the county in which it is  
 515 located; and:

516 ~~(i) In tier 1 counties, the average wage of the county in which it is located;~~

517 ~~(ii) In tier 2 counties, 105 percent of the average wage of the county in which it is~~  
 518 ~~located;~~

519 ~~(iii) In tier 3 counties, 110 percent of the average wage of the county in which it is~~  
 520 ~~located; and~~

521 ~~(iv) In tier 4 counties, 115 percent of the average wage of the county in which it is~~  
 522 ~~located; and~~

523 ~~(D)~~(E) Has no predetermined end date.

524 (3) ~~'Headquarters' means the principal central administrative office of a taxpayer or a~~  
 525 ~~subsidiary of the taxpayer.~~

526 (4) ~~'Tier' means a tier as designated pursuant to Code Section 48-7-40, as amended.~~

527 (b) ~~A taxpayer establishing its headquarters in this state or relocating its headquarters into~~  
 528 ~~this state which:~~

529 ~~(1) Within one year of the first date on which it withholds wages for employees at such~~  
 530 ~~headquarters or the headquarters of a subsidiary, defined as the taxpayer's 'affiliated~~  
 531 ~~group' within the meaning of Section 1504(a) of the Internal Revenue Code of 1986, as~~  
 532 ~~amended, pursuant to the provisions of Code Section 48-7-101, employs at least 50~~  
 533 ~~persons in new full-time jobs at such headquarters;~~

534 ~~(2) Within one year of the first date on which it withholds wages for employees at such~~  
 535 ~~headquarters pursuant to the provisions of Code Section 48-7-101 incurs within the state~~  
 536 ~~a minimum of \$1 million in construction, renovation, leasing, or other costs related to~~  
 537 ~~such establishment or relocation; and~~

538 ~~(3) Elects not to receive the tax credits provided for by Code Sections 48-7-40,~~  
 539 ~~48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such~~  
 540 ~~jobs or such investment~~

541 ~~shall be allowed a credit for taxes imposed under this article equal to \$2,500.00 annually~~  
 542 ~~per eligible new full-time job, or \$5,000.00 if the average wage of the new full-time jobs~~  
 543 ~~created is 200 percent or more of the average wage of the county in which such jobs are~~  
 544 ~~located per eligible new full-time job;~~

545 (b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this  
 546 state which elects not to receive the tax credits provided for by Code Sections 48-7-40,  
 547 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such  
 548 jobs and, within one year of the first date on which it or its subsidiary, defined as the  
 549 taxpayer's 'affiliated group' within the meaning of Section 1504(a) of the Internal Revenue  
 550 Code of 1986, as amended, pursuant to the provisions of Code Section 48-7-101, withholds  
 551 wages for employees in this state and employs at least 50 persons in new quality jobs in  
 552 this state shall be allowed a credit for taxes imposed under this article:

553 (1) Equal to \$2,500.00 annually per eligible new quality job where the job pays 110  
 554 percent or more but less than 120 percent of the average wage of the county in which the  
 555 new quality job is located;

556 (2) Equal to \$3,000.00 annually per eligible new quality job where the job pays 120  
 557 percent or more but less than 150 percent of the average wage of the county in which the  
 558 new quality job is located;

559 (3) Equal to \$4,000.00 annually per eligible new quality job where the job pays 150  
 560 percent or more but less than 175 percent of the average wage of the county in which the  
 561 new quality job is located;

562 (4) Equal to \$4,500.00 annually per eligible new quality job where the job pays 175  
 563 percent or more but less than 200 percent of the average wage of the county in which the  
 564 new quality job is located; and

565 (5) Equal to \$5,000.00 annually per eligible new quality job where the job pays 200  
 566 percent or more of the average wage of the county in which the new quality job is  
 567 located;

568 provided, however, that where the amount of such credit exceeds a taxpayer's liability for  
 569 such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's  
 570 quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one  
 571 taxable year ~~\$2,500.00 annually per eligible new full-time job, or \$5,000.00 if the average~~  
 572 ~~wage of the new full-time jobs created is 200 percent or more of the average wage of the~~  
 573 ~~county in which such jobs are located for each new full-time job~~ the credit amounts in  
 574 paragraphs (1) through (5) of this subsection for each new quality job when aggregated

575 with the credit applied against taxes under this article. Each employee whose employer  
576 receives credit against such taxpayer's quarterly or monthly payment under Code Section  
577 48-7-103 shall receive a credit against his or her income tax liability under Code Section  
578 48-7-20 for the corresponding taxable year for the full amount which would be credited  
579 against such liability prior to the application of the credit provided for in this subsection.  
580 Credits against quarterly or monthly payments under Code Section 48-7-103 and credits  
581 against liability under Code Section 48-7-20 established by this subsection shall not  
582 constitute income to the taxpayer. For each new full-time quality job created, the credit  
583 established by this subsection may be taken for the first taxable year in which the new  
584 full-time quality job is created and for the four immediately succeeding taxable years;  
585 provided, however, that such new full-time quality jobs must be created within seven years  
586 from the close of the taxable year in which the taxpayer first becomes eligible for such  
587 credit. Credit shall not be allowed during a year if the net employment increase falls below  
588 the 50 new full-time quality jobs required. Any credit received for years prior to the year  
589 in which the net employment increase falls below the 50 new full-time quality jobs  
590 required shall not be affected except as provided in subsection (f) of this Code section. The  
591 commissioner shall adjust the credit allowed each year for net new employment  
592 fluctuations above the 50 new full-time quality jobs required.

593 (c) The number of new full-time quality jobs to which this Code section shall be applicable  
594 shall be determined by comparing the monthly average of full-time new quality jobs  
595 subject to Georgia income tax withholding for the taxable year with the corresponding  
596 average for the prior taxable year.

597 (d) Any credit claimed under this Code section but not used in any taxable year may be  
598 carried forward for ten years from the close of the taxable year in which the qualified new  
599 quality jobs were established.

600 (e) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section  
601 shall be claimed within one year of the date the original return was filed or within one year  
602 of the date such return was due as prescribed in subsection (a) of Code Section 48-7-56,  
603 including any approved extensions.

604 (f) If the taxpayer has failed to maintain a new quality job in each of the four subsequent  
605 taxable years, the taxpayer shall forfeit the right to 20 percent of the credit claimed in each  
606 prior year for each year that the new quality job is not maintained. For each year such new  
607 quality job is not maintained, a taxpayer that forfeits such right is therefore liable for 20  
608 percent of all past taxes imposed by this article and all past payments under Code  
609 Section 48-7-103 that were foregone by the state as a result of the credits provided by this  
610 Code section, plus interest at the rate established by Code Section 48-2-40 computed from  
611 the date such taxes or payments would have been due if the credits had not been taken. The

612 taxpayer shall file amended income tax and withholding tax returns for all affected periods  
613 that recalculate those liabilities without regard to the forfeited credits and shall pay any  
614 additional amounts shown on such returns, with interest as provided herein.

615 (g) Unless more time is allowed by Code Section 48-2-49 or 48-7-82, the commissioner  
616 may make any assessment attributable to the forfeiture of credits claimed under this Code  
617 section for the periods covered by any amended returns filed by a taxpayer pursuant to  
618 subsection (f) of this Code section within one year of the date such returns were filed. If  
619 the taxpayer fails to file the amended return required by subsection (f) of this Code section,  
620 the commissioner may assess additional taxes or other amounts attributable to the forfeiture  
621 of credits claimed under this Code section at any time.

622 (h) Any tax credit under this Code section shall be claimed within one year of the date the  
623 original return was filed or by the date such return was due, including any approved  
624 extensions, whichever is earlier.

625 ~~(e)~~(i) The commissioner shall promulgate any rules and regulations necessary to  
626 implement and administer this Code section."

627 **SECTION 7.**

628 This Act shall become effective upon its approval by the Governor or upon its becoming law  
629 without such approval and shall be applicable for all taxable years beginning on or after  
630 January 1, 2009.

631 **SECTION 8.**

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