

The House Committee on Ways and Means offers the following substitute to HB 439:

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 style="text-align:center">**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 North American Industry  
22 Classification System Codes 515, broadcasting; ~~516~~ 519, 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 county and where the amount of the credit  
99 provided in this paragraph exceeds such business enterprise's liability for taxes imposed  
100 under this article in a taxable year, or where a business enterprise is engaged in a

101 competitive project located in a county designated by the commissioner of community  
102 affairs as a tier 3 or tier 4 county and where the amount of the credit provided in this  
103 paragraph exceeds 50 percent of such business enterprise's liability for taxes imposed  
104 under this article in a taxable year, the excess may be taken as a credit against such  
105 business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not  
106 to exceed in any one taxable year \$2,500.00 for each new full-time employee job when  
107 aggregated with the credit applied against taxes under this article. Each employee whose  
108 employer receives credit against such business enterprise's quarterly or monthly payment  
109 under Code Section 48-7-103 shall receive credit against his or her income tax liability  
110 under Code Section 48-7-20 for the corresponding taxable year for the full amount which  
111 would be credited against such liability prior to the application of the credit provided for  
112 in this paragraph. Credits against quarterly or monthly payments under Code Section 48-  
113 7-103 and credits against liability under Code Section 48-7-20 established by this  
114 paragraph shall not constitute income to the taxpayer. The number of new full-time jobs  
115 shall be determined by comparing the monthly average number of full-time employees  
116 subject to Georgia income tax withholding for the taxable year with the corresponding  
117 period of the prior taxable year. In tier 1 counties, those business enterprises that increase  
118 employment by five or more shall be eligible for the credit. In tier 2 counties, only those  
119 business enterprises that increase employment by ten or more shall be eligible for the  
120 credit. In tier 3 counties, only those business enterprises that increase employment by 15  
121 or more shall be eligible for the credit. In tier 4 counties, only those business enterprises  
122 that increase employment by 25 or more shall be eligible for the credit. The average  
123 wage of the new jobs created must be above the average wage of the county that has the  
124 lowest average wage of any county in the state to qualify as reported in the most recently  
125 available annual issue of the Georgia Employment and Wages Averages Report of the  
126 Department of Labor. To qualify for a credit under this paragraph, the employer must  
127 make health insurance coverage available to the employee filling the new full-time job;  
128 provided, however, that nothing in this paragraph shall be construed to require the  
129 employer to pay for all or any part of health insurance coverage for such an employee in  
130 order to claim the credit provided for in this paragraph if such employer does not pay for  
131 all or any part of health insurance coverage for other employees. Credit shall not be  
132 allowed during a year if the net employment increase falls below the number required in  
133 such tier. ~~Any credit received for years prior to the year in which the net employment~~  
134 ~~increase falls below the number required in such tier shall not be affected.~~ In any year  
135 in which the net employment increase falls below the number required in such tier, the  
136 taxpayer shall forfeit the right to the credit claimed for that taxable year. For the year that  
137 the net employment increase falls below the number required in such tier, a taxpayer that

138 forfeits such right is therefore liable for all past taxes imposed by this article for that  
139 taxable year and all past payments under Code Section 48-7-103 for that taxable year that  
140 were foregone by the state as a result of the credits provided by this Code section;  
141 provided, however, that Code Section 48-2-40 shall not apply to any such forfeiture. The  
142 state revenue commissioner shall adjust the credit allowed each year for net new  
143 employment fluctuations above the minimum level of the number required in such tier.  
144 (2) Existing business enterprises shall be allowed an additional tax credit for taxes  
145 imposed under this article equal to \$500.00 per eligible new full-time employee job for  
146 ~~one year after the creation of such job~~ the first year in which the new full-time employee  
147 job is created. The additional credit shall be claimed in ~~year two after the creation of~~  
148 ~~such job~~ the first taxable year in which the new full-time employee job is created. The  
149 number of new full-time jobs shall be determined by comparing the monthly average  
150 number of full-time employees subject to Georgia income tax withholding for the taxable  
151 year with the corresponding period of the prior taxable year. In tier 1 counties, those  
152 existing business enterprises that increase employment by five or more shall be eligible  
153 for the credit. In tier 2 counties, only those existing business enterprises that increase  
154 employment by ten or more shall be eligible for the credit. In tier 3 counties, only those  
155 existing business enterprises that increase employment by 15 or more shall be eligible for  
156 the credit. In tier 4 counties, only those existing business enterprises that increase  
157 employment by 25 or more shall be eligible for the credit. The average wage of the new  
158 jobs created must be above the average wage of the county that has the lowest average  
159 wage of any county in the state to qualify as reported in the most recently available  
160 annual issue of the Georgia Employment and Wages Averages Report of the Department  
161 of Labor. To qualify for a credit under this paragraph, the employer must make health  
162 insurance coverage available to the employee filling the new full-time job; provided,  
163 however, that nothing in this paragraph shall be construed to require the employer to pay  
164 for all or any part of health insurance coverage for such an employee in order to claim the  
165 credit provided for in this paragraph if such employer does not pay for all or any part of  
166 health insurance coverage for other employees. Credit shall not be allowed during a year  
167 if the net employment increase falls below the number required in such tier. Any credit  
168 ~~received~~ generated and utilized for years prior to the year in which the net employment  
169 increase falls below the number required in such tier shall not be affected. The state  
170 revenue commissioner shall adjust the credit allowed each year for net new employment  
171 fluctuations above the minimum level of the number required in such tier. This  
172 paragraph shall apply only to new eligible full-time jobs created in taxable years  
173 beginning on or after January 1, 2006, and ending no later than taxable years beginning  
174 prior to January 1, 2011.

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

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

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

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

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

208 (j) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section  
 209 shall be claimed within one year of the earlier of the date the original tax return was filed  
 210 or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56,  
 211 including any approved extensions.

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

215 (l) Taxpayers that initially claimed the credit under this Code section for any taxable year  
 216 beginning before January 1, 2009, shall be governed, for purposes of all such credits  
 217 claimed as well as any credits claimed in subsequent taxable years related to such initial  
 218 claim, by this Code section as it was in effect for the taxable year in which the taxpayer  
 219 made such initial claim."

## 220 SECTION 2.

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

223 "48-7-40.1.

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

225 (1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other  
 226 programming content to the general public, subscribers, or to third parties via radio,  
 227 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture  
 228 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'  
 229 is limited to establishments classified under the 2007 North American Industry  
 230 Classification System Codes 515, broadcasting; ~~516~~ 519, Internet publishing and  
 231 broadcasting; 517, telecommunications; and 512, motion picture and sound recording  
 232 industries.

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

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

242 (1) Highest unemployment rate for the most recent 36 month period;  
 243 (2) Lowest per capita income for the most recent 36 month period; and  
 244 (3) Highest percentage of residents whose income is below the poverty level according  
 245 to the most recent data available.

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

248 (1) Any area comprised of ten or more contiguous census tracts which, in the opinion of  
 249 the commissioner of community affairs, undergoes a sudden and severe period of  
 250 economic distress caused by the closing of one or more business enterprises located in  
 251 such area;

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

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

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

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

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

277 (e) Business enterprises in areas designated by the commissioner of community affairs as  
 278 less developed areas shall be allowed a job tax credit for taxes imposed under this article  
 279 equal to \$3,500.00 annually per eligible new full-time employee job for five years  
 280 beginning with ~~years two through six after the creation of such job~~ the first taxable year in  
 281 which the new full-time employee job is created and for the four immediately succeeding  
 282 taxable years; provided, however, that where the amount of such credit exceeds a business  
 283 enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit  
 284 against such business enterprise's quarterly or monthly payment under Code Section

285 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new full-time  
286 employee job when aggregated with the credit applied against taxes under this article.  
287 Each employee whose employer receives credit against such business enterprise's quarterly  
288 or monthly payment under Code Section 48-7-103 shall receive credit against his or her  
289 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the  
290 full amount which would be credited against such liability prior to the application of the  
291 credit provided for in this subsection. Credits against quarterly or monthly payments under  
292 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established  
293 by this subsection shall not constitute income to the taxpayer. The number of new full-time  
294 jobs shall be determined by comparing the monthly average number of full-time employees  
295 subject to Georgia income tax withholding for the taxable year with the corresponding  
296 period of the prior taxable year. Only those business enterprises that increase employment  
297 by five or more in a less developed area shall be eligible for the credit; provided, however,  
298 that within areas of pervasive poverty as designated under paragraphs (2) and (4) of  
299 subsection (c) of this Code section businesses shall only have to increase employment by  
300 two or more jobs in order to be eligible for the credit, provided that, if a business only  
301 increases employment by two jobs, the persons hired for such jobs shall not be married to  
302 one another. The average wage of the new jobs created must be above the average wage  
303 of the county that has the lowest wage of any county in the state to qualify as reported in  
304 the most recently available annual issue of the Georgia Employment and Wages Averages  
305 Report of the Department of Labor. To qualify for a credit under this subsection, the  
306 employer must make health insurance coverage available to the employee filling the new  
307 full-time job; provided, however, that nothing in this subsection shall be construed to  
308 require the employer to pay for all or any part of health insurance coverage for such an  
309 employee in order to claim the credit provided for in this subsection if such employer does  
310 not pay for all or any part of health insurance coverage for other employees. Credit shall  
311 not be allowed during a year if the net employment increase falls below five or two, as  
312 applicable. ~~Any credit received for years prior to the year in which the net employment~~  
313 ~~increase falls below five or two shall not be affected.~~ In any year in which the net  
314 employment increase falls below five or two, as applicable, the taxpayer shall forfeit the  
315 right to the credit claimed for that taxable year. For the year that the net employment  
316 increase falls below five or two, as applicable, a taxpayer that forfeits such right is  
317 therefore liable for all past taxes imposed by this article for that taxable year and all past  
318 payments under Code Section 48-7-103 for that taxable year that were foregone by the state  
319 as a result of the credits provided by this Code section; provided, however that Code  
320 Section 48-2-40 shall not apply to any such forfeiture. The state revenue commissioner

321 shall adjust the credit allowed each year for net new employment fluctuations above the  
322 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) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section  
344 shall be claimed within one year of the earlier of the date the original tax return was filed  
345 or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56,  
346 including any approved extensions.

347 (j) Taxpayers that initially claimed the credit under this Code section for any taxable year  
348 beginning before January 1, 2009, shall be governed, for purposes of all such credits  
349 claimed as well as any credits claimed in subsequent taxable years related to such initial  
350 claim, by this Code section as it was in effect for the taxable year in which the taxpayer  
351 made such initial claim."

### 352 SECTION 3.

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

355 "48-7-40.5.

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

357 (1) 'Approved retraining' means employer provided or employer sponsored retraining  
358 that meets the following conditions:

359 (A) It enhances the functional skills of employees otherwise unable to function  
360 effectively on the job due to skill deficiencies or who would otherwise be displaced  
361 because such skill deficiencies would inhibit their utilization of new technology;  
362 provided, however, that approved retraining shall not include any retraining on  
363 commercially, mass produced software related to word processing, data base  
364 management, presentations, spreadsheets, e-mail, personal information management,  
365 or computer operating systems except a retraining tax credit shall be allowable for those  
366 providing support or training on such software;

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

368 (C) The employer does not require the employee to make any payment for the  
369 retraining, either directly or indirectly through use of forfeiture of leave time, vacation  
370 time, or other compensable time.

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

375 (3) 'Employee' means any employee resident in this state who is employed for at least  
376 25 hours a week; and who has been continuously employed by the employer for at least  
377 16 consecutive weeks.

378 (4) 'Employer' means any employer upon whom an income tax is imposed by this  
379 chapter.

380 (5) 'Employer provided' refers to approved retraining offered on the premises of the  
381 employer or on premises approved by the Technical College System of Georgia by  
382 instructors hired by or employed by an employer.

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

386 (b) A tax credit shall be granted to an employer who provides or sponsors an one or more  
387 approved retraining program programs in a taxable year. The total amount of the tax credit  
388 allowed per full-time employee amount of the tax credit shall be equal to one-half of the  
389 costs of retraining per full-time employee, or \$500.00 per full-time employee, whichever  
390 is less, for each employee who has successfully completed an approved retraining program;  
391 provided, however, that in no event shall the amount of the tax credit authorized under this  
392 subsection exceed \$1,250.00 per year per full-time employee who has successfully  
393 completed more than one approved retraining program. No employer ~~may~~ shall receive a

394 credit if the employer requires that the employee reimburse or pay the employer for the cost  
395 of retraining.

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

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

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

#### 422 **SECTION 4.**

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

425 "48-7-40.12.

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

427 (1) 'Base amount' means the product of a business enterprise's Georgia ~~taxable net~~  
428 income gross receipts in the current taxable year and the average of the ratios of its  
429 aggregate qualified research expenses to Georgia ~~taxable net income~~ gross receipts for

430 the preceding three taxable years or 0.300, whichever is less; provided, however, that a  
431 business enterprise need not have had a positive taxable net income for the preceding  
432 three taxable years in order to claim the credit provided in this Code section. For  
433 purposes of this paragraph, 'Georgia gross receipts' shall be the numerator of the gross  
434 receipts factor provided in subsection (d) of Code Section 48-7-31.

435 (2) 'Broadcasting' means the transmission or licensing of audio, video, text, or other  
436 programming content to the general public, subscribers, or to third parties via radio,  
437 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture  
438 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'  
439 is limited to establishments classified under the 2007 North American Industry  
440 Classification System Codes 515, broadcasting; ~~516~~ 519, Internet publishing and  
441 broadcasting; 517, telecommunications; and 512, motion picture and sound recording  
442 industries.

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

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

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

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

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

461 (e) In the first five years of a newly formed business enterprise's operations in this state,  
462 where the amount of a credit claimed under this Code section exceeds 50 percent of a  
463 taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit  
464 against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each  
465 employee whose employer receives credit against such taxpayer's quarterly or monthly  
466 payment under Code Section 48-7-103 shall receive a credit against his or her income tax

467 liability under Code Section 48-7-20 for the corresponding taxable year for the full amount  
 468 which would be credited against such liability prior to the application of the credit provided  
 469 for in this subsection. Credits against quarterly or monthly payments under Code Section  
 470 48-7-103 and credits against liability under Code Section 48-7-20 established by this  
 471 subsection shall not constitute income to the taxpayer."

472 **SECTION 5.**

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

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

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

483 (B) For all taxable years beginning on or after January 1, 2010, the total amount of net  
 484 tons, containers, or twenty-foot equivalent units (TEU's) of product actually imported  
 485 into this state or exported out of this state by way of a waterborne ship or vehicle  
 486 through a port facility during the second preceding 12 month period; provided,  
 487 however, that in the event the total amount actually imported into this state or exported  
 488 out of this state during such period was not at least 75 net tons, five containers, or ten  
 489 twenty-foot equivalent units (TEU's), then 'base year port traffic' means 75 net tons,  
 490 five containers, or ten twenty-foot equivalent units (TEU's)."

491 "(5) 'Port traffic' means:

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

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

499 **SECTION 6.**

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

502 "48-7-40.17.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

536 (3) ~~Elects not to receive the tax credits provided for by Code Sections 48-7-40,~~  
537 ~~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~~  
538 ~~jobs or such investment~~

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

543 (b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this  
 544 state which elects not to receive the tax credits provided for by Code Sections 48-7-40,  
 545 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  
 546 jobs and investments created by, arising from, related to, or connected in any way with the  
 547 same project and, within one year of the first date on which the taxpayer pursuant to the  
 548 provisions of Code Section 48-7-101 withholds wages for employees in this state and  
 549 employs at least 50 persons in new quality jobs in this state, shall be allowed a credit for  
 550 taxes imposed under this article:

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

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

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

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

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

566 provided, however, that where the amount of such credit exceeds a taxpayer's liability for  
 567 such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's  
 568 quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one  
 569 taxable year ~~\$2,500.00 annually per eligible new full-time job, or \$5,000.00 if the average~~  
 570 ~~wage of the new full-time jobs created is 200 percent or more of the average wage of the~~  
 571 ~~county in which such jobs are located for each new full-time job~~ the credit amounts in  
 572 paragraphs (1) through (5) of this subsection for each new quality job when aggregated  
 573 with the credit applied against taxes under this article. Each employee whose employer  
 574 receives credit against such taxpayer's quarterly or monthly payment under Code Section  
 575 48-7-103 shall receive a credit against his or her income tax liability under Code Section

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

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

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

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

602 (f) If the taxpayer has failed to maintain a new quality job in a taxable year, the taxpayer  
603 shall forfeit the right to the credit claimed for such job in that year. For each year such new  
604 quality job is not maintained, a taxpayer that forfeits such right is therefore liable for all  
605 past taxes imposed by this article for that taxable year and all past payments under Code  
606 Section 48-7-103 for that taxable year that were foregone by the state as a result of the  
607 credits provided by this Code section; provided, however, that Code Section 48-2-40 shall  
608 not apply to any such forfeiture.

609 (g) Taxpayers that initially claimed the credit under this Code section for any taxable year  
610 beginning before January 1, 2009, shall be governed, for purposes of all such credits  
611 claimed as well as any credits claimed in subsequent taxable years related to such initial

612 claim, by this Code section as it was in effect for the taxable year in which the taxpayer  
613 made such initial claim.  
614 ~~(e)~~(h) The commissioner shall promulgate any rules and regulations necessary to  
615 implement and administer this Code section."

616 **SECTION 7.**

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

620 **SECTION 8.**

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