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

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"48-7-40.

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

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

(2) 'Business enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing,

telecommunications, broadcasting, tourism, and research and development industries. Such term shall not include retail businesses.

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

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

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

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

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

(C) Highest percentage of residents whose incomes are below the poverty level according to the most recent data available.

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

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

(c.1) The commissioner of community affairs shall be authorized to include in the tier 1 designation provided for in subsection (b) of this Code section any tier 2 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 1 county.

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

(e)(1) Business enterprises in counties designated by the commissioner of community affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article equal to $3,500.00 annually per eligible new full-time employee job for five years beginning with ~~years two through six after the creation of such job~~ <u>the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years</u>; provided, however, that where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year $3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer. Business enterprises in counties designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under this article equal to $2,500.00 annually, business enterprises in counties designated by the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under this article equal to $1,250.00 annually, and business enterprises in counties designated by the commissioner of community affairs as tier 4 counties shall be allowed a job tax credit for taxes imposed under this article equal to $750.00 annually for each new full-time employee job for five years beginning with ~~years two through six after the creation of the job~~ <u>the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years. Where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 2 county and where the amount of the credit provided in this paragraph exceeds such business enterprise's liability for taxes imposed under this article in a taxable year, or where a business enterprise is engaged in a</u>

competitive project located in a county designated by the commissioner of community affairs as a tier 3 or tier 4 county and where the amount of the credit provided in this paragraph exceeds 50 percent of such business enterprise's liability for taxes imposed under this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year $2,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer. The number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. ~~Any credit received for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected.~~ In any year in which the net employment increase falls below the number required in such tier, the taxpayer shall forfeit the right to the credit claimed for that taxable year. For the year that the net employment increase falls below the number required in such tier, a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this article for that taxable year and all past payments under Code Section 48-7-103 for that taxable year that were foregone by the state as a result of the credits provided by this Code section; provided, however, that Code Section 48-2-40 shall not apply to any such forfeiture. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier.

(2) Existing business enterprises shall be allowed an additional tax credit for taxes imposed under this article equal to $500.00 per eligible new full-time employee job ~~for one year after the creation of such job~~ the first year in which the new full-time employee job is created. The additional credit shall be claimed in ~~year two after the creation of such job~~ the first taxable year in which the new full-time employee job is created. The number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those existing business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those existing business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those existing business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those existing business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit ~~received~~ generated and utilized for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier. This paragraph shall apply only to new eligible full-time jobs created in taxable years beginning on or after January 1, 2006, and ending no later than taxable years beginning prior to January 1, 2011.

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

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

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

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

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

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

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

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

SECTION 2.

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

″48-7-40.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3.

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

″48-7-40.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4.

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

″48-7-40.12.

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

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

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

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

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

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

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

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

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

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

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

SECTION 5.

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

″(1) 'Base year port traffic' means:

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

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

″(5) 'Port traffic' means:

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

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

SECTION 6.

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

"48-7-40.17.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(e)~~(h) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.″

SECTION 7.

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

SECTION 8.

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