House Bill 438 (COMMITTEE SUBSTITUTE)

By: Representatives O`Neal of the 146th and Stephens of the 164th

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 tax, so as to provide for the comprehensive revision of the income tax credits for qualified jobs, investment, investment property, and projects; to provide for procedures, conditions, and limitations; to provide for 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 tax is amended by revising Code Section 48-7-40.24, relating to income tax credits for qualified jobs, investment, investment property, and projects, to read as follows:

"48-7-40.24.

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

(1) 'Business enterprise' means any ~~business or the headquarters of any such business which is engaged in manufacturing. Such~~ enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, business trust, real estate trust, or other form of organization engaged in or carrying on any business activities within this state, except that such term shall not include retail businesses.

(2) 'Eligible full-time employee' means an individual holding a full-time employee job created by a qualified project.

(3) 'Force majeure' means any:

(A) Explosions, implosions, fires, conflagrations, accidents, or contamination;

(B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail, tornadoes, hurricanes, lightning, or other natural calamities or acts of God;

(C) Acts of war (whether or not declared), carnage, blockade, or embargo;

(D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot, public disorder, or violent demonstrations;

(E) Strikes or other labor disturbances; or

(F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or compulsory acquisition of the site or sites of a qualified project or any part thereof;

but such term shall not include any event or circumstance that could have been prevented, overcome, or remedied in whole or in part by the taxpayer through the exercise of reasonable diligence and due care, nor shall such term include the unavailability of funds.

(4) 'Full-time employee job' and 'full-time job' means employment of an individual which:

(A) Is located in this state at the site or sites of a qualified project or the ~~manufacturing~~ facility or facilities resulting therefrom;

(B) Involves a regular work week of 35 hours or more;

(C) Has no predetermined end date; and

(D) Pays at or above the average wage of the county with the lowest average wage in the state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

For purposes of this paragraph, leased employees will be considered employees of the company using their services and such persons may be counted in determining the company's job tax credits under this Code section if their employment otherwise meets the definition of full-time job contained herein. In addition, an individual's employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. The employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year.

(5) ~~'Investment requirement' means the requirement that by the close of the sixth taxable year following the withholding start-date a minimum of $450 million in qualified investment property will have been purchased or acquired by the business enterprise to be used with respect to a qualified project.~~

~~(6)~~ 'Job creation requirement' means the requirement that no later than the close of the sixth taxable year following the withholding ~~start-date~~ start date, the business enterprise will have a minimum of 1,800 eligible full-time employees.

~~(7)~~(6) 'Job maintenance requirement' means the requirement that, with respect to each year in the recapture period, the monthly average number of eligible full-time employees employed by the business enterprise, determined as prescribed by subsection (l) of this Code section, must equal or exceed 1,800.

(7) 'Payroll maintenance requirement' means the requirement that, with respect to each year in the recapture period, the total annual Georgia W-2 reported payroll with respect to a qualified project must equal or exceed $150 million.

(8) 'Payroll requirement' means the requirement that no later than the close of the sixth taxable year following the withholding start date, the business enterprise will have a minimum of $150 million in total annual Georgia W-2 reported payroll with respect to a qualified project.

~~(8)~~(9) 'Qualified investment property' means all real and personal property purchased or acquired by a taxpayer for use in a qualified project, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and ~~machinery and equipment~~ any personal property to be used in the ~~manufacturing~~ facility or facilities.

(10) 'Qualified investment property requirement' means the requirement that by the close of the sixth taxable year following the withholding start date a minimum of $450 million in qualified investment property will have been purchased or acquired by the business enterprise to be used with respect to a qualified project.

~~(9)~~(11) 'Qualified project' means a project which meets the job creation requirement and either the payroll requirement or qualified investment property requirement. If the taxpayer selects the qualified investment property requirement as one of the conditions for its project, the property shall involve the construction of one or more new facilities ~~the construction of a new manufacturing facility~~ in this state or the expansion of ~~an~~ one or more existing ~~manufacturing facility~~ facilities in this state. For purposes of this paragraph, the term '~~manufacturing facility~~ facilities' means all facilities comprising a single ~~facility, including contiguous~~ project, including noncontiguous parcels of land, improvements to such land, buildings, building improvements, and any ~~machinery or equipment that is used in the process of making, fabricating, constructing, forming, or assembling a product from components or from raw, unfinished, or semifinished materials, and any support facility. For purposes of this paragraph, the term 'support facility' means any warehouses, distribution centers, storage facilities, research and development facilities, laboratories, repair and maintenance facilities, corporate offices, sales or marketing offices, computer operations facilities, or administrative offices, that are contiguous to the manufacturing facility that results from a qualified project, constructed or expanded as part of the same such project, and designed primarily for~~

~~activities supporting the manufacturing operations at such manufacturing facility~~ personal property that is used in the facility or facilities.

~~(10)~~(12) 'Recapture period' means the period of five consecutive taxable years that commences after the first taxable year in which a business enterprise has satisfied ~~both the investment requirement and~~ the job creation requirement and either the payroll requirement or the qualified investment property requirement, as selected by the taxpayer.

~~(11)~~(13) 'Withholding ~~start-date~~ start date' means the date on which the business enterprise begins to withhold Georgia income tax from the wages of its employees located at the site or sites of a qualified project.

(b) A business enterprise that is planning a qualified project shall be allowed to take the job tax credit provided by this Code section under the following conditions:

(1) An application is filed with the commissioner that:

(A) Describes the qualified project to be undertaken by the business enterprise, including when such project will commence and the expected withholding ~~start-date~~ start date;

(B) Certifies that such project will meet the ~~investment~~ job creation requirement and ~~the job creation~~ either the payroll requirement or the qualified investment property requirement prescribed by this Code section; and

(C) Certifies that during the recapture period applicable to such project the business enterprise will meet the job maintenance requirement and, if applicable, the payroll maintenance requirement prescribed by this Code section;

(2) Following the commissioner's referral of the application to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, said panel, after reviewing the application, certifies that the new or expanded facility or ~~expansion~~ facilities will have a significant beneficial economic effect on the region for which ~~it is~~ they are planned. The panel shall make its determination within 30 days after receipt from the commissioner of the taxpayer's application and any necessary supporting documentation. Although the panel's certification may be based upon other criteria, a project that meets the minimum ~~employment and~~ job creation requirement and either the payroll requirement or qualified investment ~~requirements~~ property requirement, as applicable, specified in paragraph (1) of this subsection will have a significant beneficial economic effect on the region for which it is planned if one of the following additional criteria is met:

(A) The project will create new full-time employee jobs with average wages that are, as determined by the Department of Labor, for all jobs for the county in question:

(i) Twenty percent above such average wage for projects located in tier 1 counties;

(ii) Ten percent above such average wage for projects located in tier 2 counties; or

(iii) Five percent above such average wage for projects located in tier 3 or tier 4 counties; or

(B) The project demonstrates high growth potential based upon the prior year's Georgia net taxable income growth of over 20 percent from the previous year, if the taxpayer's Georgia net taxable income in each of the two preceding years also grew by 20 percent or more.

(c) Any lease for a period of five years or longer of any real or personal property used in a new or expanded ~~manufacturing~~ facility or facilities which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition thereof by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the year in which the lease becomes binding on the lessor and the taxpayer.

(d) A business enterprise whose application is approved shall be allowed a tax credit for taxes imposed under this article equal to $5,250.00 annually per new eligible full-time employee job for five years beginning with the year in which such job is created through year five after such creation; 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. The taxpayer may file an election with the commissioner to take such credit against quarterly or monthly payments under Code Section 48-7-103 that become due before the due date of the income tax return on which such credit may be claimed. In the event of such an election, the commissioner shall confirm with the taxpayer a date, which shall not be later than 30 days after receipt of the taxpayer's election, when the taxpayer may begin to take the credit against such quarterly or monthly payments. For any one taxable year the amounts taken as a credit against taxes imposed under this article and against the business enterprise's quarterly or monthly payments under Code Section 48-7-103 may not in the aggregate exceed $5,250.00 per eligible full-time employee job. Each employee whose employer receives credit against such business enterprise'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. 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.

(e) The number of new full-time jobs to which this Code section shall be applicable shall be determined ~~each month by comparing the number of full-time employees subject to Georgia income tax withholding as of the last payroll period of such month or as the payroll period during each month used for the purpose of reports to the Department of Labor with the number of such employees for the previous month~~ by comparing the monthly average number of eligible full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period for the prior taxable year.

(f) 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.

(g) To qualify for the credit provided by this Code section a new full-time job must be created by the close of the seventh taxable year following the business enterprise's withholding ~~start-date~~ start date. In no event may a credit be claimed under this Code section for more than 3,300 new full-time employee jobs created by any one project; provided, however, that the taxpayer may claim the credits provided by Code Sections 48-7-40 and 48-7-40.1 for any such additional jobs if the taxpayer meets the terms and conditions thereof.

(h) Any credit claimed under this Code section but not fully used in the manner prescribed in subsection (d) of this Code section may be carried forward for ten years from the close of the taxable year in which the qualified job was established.

(i) Except as provided in subsection (g) of this Code section, a taxpayer who is entitled to and takes credits provided by this Code section ~~with respect to~~ for a qualified project shall not be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.10, 48-7-40.11, 48-7-40.15, 48-7-40.17, or 48-7-40.18 ~~with respect to~~ for jobs, investments, child care, or ground-water usage shifts created by, arising from, related to, or connected in any way with the same project. Provided such taxpayer otherwise qualifies, such ~~Such~~ taxpayer may take any credit authorized by Code Section 48-7-40.5 for the costs of retraining an employee located at the site or sites of such project or the ~~manufacturing~~ facility or facilities resulting therefrom, but only ~~with respect to~~ for costs incurred more than five years after the date the ~~manufacturing~~ facility or facilities first ~~becomes~~ become operational.

(j) Except under those circumstances described in subsection (k) of this Code section, the taxpayer shall, not more than 60 days after the close of the sixth taxable year following its withholding ~~start-date~~ start date, file a report with the commissioner concerning the number of eligible full-time employee jobs created by such project; the wages of such jobs; the qualified investment property purchased or acquired by the taxpayer for the project; and any other information that the commissioner may reasonably require in order to determine whether the taxpayer has met ~~both~~ the job creation requirement and either the payroll requirement or the qualified investment property requirement, as selected by the taxpayer, for ~~and job creation requirement with respect to~~ such project. If the taxpayer has failed to meet ~~either such~~ any applicable job creation, payroll, or qualified investment property requirement, the taxpayer will forfeit the right to claim any credits provided by this Code section for such project. A taxpayer that forfeits the right to claim such credits is liable for all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were foregone by the state as a result of the credits, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification from the commissioner that ~~either the investment requirement or the job creation~~ any applicable job creation, payroll, or qualified investment property requirement was not met, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided herein. On such amended returns the taxpayer may claim any credit to which it would have been entitled under this article but for having taken the credit provided by this Code section.

(k) If the recapture period applicable to a qualified project begins with or before the sixth taxable year following the taxpayer's withholding ~~start-date~~ start date, the taxpayer shall, not later than 60 days after the close of the taxable year immediately preceding the recapture period, file a report with the commissioner concerning the number of eligible full-time employee jobs created by such project; the wages of such jobs; the qualified investment property purchased or acquired by the taxpayer for the project; and any other information that the commissioner may reasonably require in order to verify that the taxpayer met ~~both~~ the job creation requirement and either the payroll requirement or the qualified investment property requirement ~~and job creation requirement~~ in such preceding year.

(l) Not more than 60 days after the close of each taxable year within the recapture period, the taxpayer shall file a report, using such form and providing such information as the commissioner may reasonably require, concerning whether it met the job maintenance requirement and, if applicable, the payroll maintenance requirement for such year. For purposes of this subsection, whether such job maintenance requirement has been satisfied shall be determined by comparing the monthly average number of eligible full-time employees subject to Georgia income tax withholding for the taxable year with 1,800. For purposes of this subsection, whether such payroll maintenance requirement has been satisfied shall be determined by comparing the total annual Georgia W-2 reported payroll with respect to a qualified project for the taxable year with $150 million. If the taxpayer has failed to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, the taxpayer will forfeit the right to 20 percent of all credits provided by this Code section for such project. A taxpayer that forfeits such right is liable for 20 percent of all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were foregone by the state as a result of the credits provided by this Code section, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification by the commissioner that the taxpayer has failed to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided herein.

(m) A taxpayer who fails to meet the job maintenance requirement or payroll maintenance requirement, or both, for any taxable year within the recapture period because of force majeure may petition the commissioner for relief from such requirement. Such a petition must be made with and at the same time as the report required by subsection (l) of this Code section. If the commissioner determines that force majeure materially affected the taxpayer's ability to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, but that the portion of the year so affected was six months or less, for purposes of the job maintenance requirement the commissioner shall calculate the taxpayer's monthly average number of eligible full-time employees for purposes of subsection (l) of this Code section by disregarding the affected months and for purposes of the payroll maintenance requirement the commissioner shall annualize the total Georgia W-2 reported payroll with respect to a qualified project for the portion of the year not so affected. If the commissioner determines that the affected portion of the year was more than six months, the taxable year shall be disregarded in its entirety for purposes of the job maintenance requirement or payroll maintenance requirement, or both, and the recapture period applicable to the qualified project shall be extended for an additional year.

(n) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the commissioner may make any assessment attributable to the forfeiture of credits claimed under this Code section for the periods covered by any amended returns filed by a taxpayer pursuant to subsection (j) or (l) of this Code section within one year from the date such returns are filed. If the taxpayer fails to file the reports or any amended return required by subsection (j) or (l) of this Code Section, the commissioner may assess additional tax or other amounts attributable to the forfeiture of credits claimed under this Code section at any time.

(o) Projects certified by the panel pursuant to paragraph (2) of subsection (b) of this Code section before January 1, 2009, shall be governed by this Code section as it was in effect for the taxable year the project was certified.

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

SECTION 2.

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

SECTION 3.

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