

House Bill 481 (AS PASSED HOUSE AND SENATE)

By: Representatives Graves of the 12th, Burkhalter of the 50th, Keen of the 179th, Ehrhart of the 36th, Rice of the 51st, and others

A BILL TO BE ENTITLED
AN ACT

1 To enact the Jobs, Opportunity, and Business Success Act of 2009; to amend and enact
2 provisions intended to provide for tax relief and encourage employment opportunities and
3 business stimulation; to amend Title 14 of the Official Code of Georgia Annotated, relating
4 to corporations, partnerships, and associations, so as to provide for a period of time for the
5 waiver of certain filing fees otherwise charged in connection with such entities; to amend
6 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
7 so as to provide that for a period of time employers who hire persons receiving employment
8 security benefits shall be entitled to a credit against employer contributions; to amend Title
9 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," so as to
10 provide that a portion of net long-term capital gains shall be excluded from state taxable
11 income of corporations and individuals; to provide for credits against state income tax for
12 employers employing certain previously unemployed persons; to eliminate the requirement
13 for dealers to make returns and remittances with respect to estimated sales and use tax
14 liability; to eliminate the corporate net worth tax; to provide for other related matters; to
15 provide for an effective date; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 This Act shall be known and may be cited as the "Jobs, Opportunity, and Business Success
19 Act of 2009."

20 **SECTION 2.**

21 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,
22 and associations, is amended by revising Code Section 14-2-122, relating to fees for filings
23 related to business corporations, as follows:

24 "14-2-122.

25 (a) The Secretary of State shall collect the following fees and penalties when the
26 documents described in this Code section are delivered to him or her for filing:

<u>Document</u>	<u>Fee</u>
27 (1) Articles of incorporation	\$ 100.00
28 (2) Application for certificate of authority	225.00
29 (3) Annual registration	30.00
30 (4) Penalty for late filing of annual registration	25.00
31 (5) Agent's statement of resignation	No fee
32 (6) Certificate of judicial dissolution	No fee
33 (7) Articles of dissolution or intent to dissolve	No fee
34 (8) Application of withdrawal	No fee
35 (9) Application for reservation of a corporate name	25.00
36 (10) Civil penalty for a foreign corporation transacting business in this state 37 without a certificate of authority	500.00
38 (11) Statement of change of address of registered agent...\$5.00 per corporation 39 but not less than	20.00
40 (12) Application for reinstatement	100.00
41 (13) Certificate of conversion	95.00
42 (14) Any other document required or permitted to be filed by this chapter . .	20.00

44 (b) For the period of time beginning July 1, 2009, and ending June 30, 2010, the fees
45 specified in paragraphs (1) and (2) of subsection (a) of this Code section shall be waived,
46 and there shall be no fee for such filings."

47 **SECTION 3.**

48 Said Title 14 is further amended by revising Code Section 14-9-1101, relating to fees for
49 filings related to limited partnerships, as follows:

50 "14-9-1101.

51 (a) The Secretary of State shall charge and collect for filing:

<u>Document</u>	<u>Fee</u>
52 (1) A certificate of limited partnership	\$ 100.00
53 (2) A registration of a foreign limited partnership	225.00
54 (3) An annual registration	30.00
55 (4) Penalty for late filing of annual registration	25.00
56 (5) Agent's statement of resignation	No fee

58	(6) Certificate of cancellation	No fee
59	(7) Application of withdrawal	No fee
60	(8) Statement of change of address of registered agent or registered office...	
61	\$5.00 per limited partnership but not less than	20.00
62	(9) An amendment to a certificate of limited partnership for the purpose of	
63	becoming a limited liability partnership	100.00
64	(10) Certificate of election to become a limited partnership	80.00
65	(11) Certificate of conversion	95.00
66	(12) Application for reservation of a name	25.00
67	(13) Any other document required or permitted pursuant to this chapter	20.00
68	<u>(b) For the period of time beginning July 1, 2009, and ending June 30, 2010, the fees</u>	
69	<u>specified in paragraphs (1) and (2) of subsection (a) of this Code section shall be waived,</u>	
70	<u>and there shall be no fee for such filings."</u>	

SECTION 4.

72 Said Title 14 is further amended by revising Code Section 14-11-1101, relating to fees for
 73 filings related to limited liability companies, as follows:

74 "14-11-1101.

75 (a) The Secretary of State shall collect the following fees when the documents described
 76 below are delivered to the Secretary of State for filing pursuant to this chapter:

	<u>Document</u>	<u>Fee</u>
78	(1) Articles of organization	\$ 100.00
79	(2) Articles of amendment	20.00
80	(3) Articles of merger	20.00
81	(4) Certificate of election under Code Section 14-11-212 (together with	
82	articles of organization)	95.00
83	(5) Application for certificate of authority to transact business	225.00
84	(6) Statement of commencement of winding up	No Fee
85	(7) Certificate of termination	No Fee
86	(8) Application of withdrawal	No fee
87	(9) Articles of correction	20.00
88	(10) Application for reservation of a name	25.00
89	(11) Statement of change of registered office or registered agent...\$5.00	
90	per limited liability company (foreign or domestic), but not less than . .	20.00

91	(12) Registered agent's statement of resignation pursuant to subsection (d)	
92	of Code Section 14-11-209 or subsection (d) of Code Section 14-11-703	No fee
93	(13) Certificate of judicial dissolution	No fee
94	(14) Annual registration (foreign or domestic)	30.00
95	(15) Penalty for late filing of annual registration	25.00
96	(16) Reinstatement fee	100.00
97	(17) Any other document required or permitted to be filed by	
98	this chapter	20.00
99	(18) Certificate of conversion	95.00
100	(b) The Secretary of State shall collect the penalty provided for in paragraph (2) of	
101	subsection (c) of Code Section 14-11-711.	
102	<u>(c) For the period of time beginning July 1, 2009, and ending June 30, 2010, the fees</u>	
103	<u>specified in paragraphs (1) and (5) of subsection (a) of this Code section shall be waived,</u>	
104	<u>and there shall be no fee for such filings."</u>	

SECTION 5.

106 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
 107 is amended by revising Code Section 34-8-156, relating to the State-wide Reserve ratio and
 108 reduction in tax rate, by adding a new subsection as follows:

109 "(g)(1) The Commissioner shall make an expedited request within 15 days of the
 110 effective date of this Act for a determination by the United States secretary of labor that
 111 implementation of paragraph (3) of this subsection is in conformity with federal law. If
 112 the United States secretary of labor determines that paragraph (3) of this subsection is not
 113 in conformity with federal law and cannot be adjusted procedurally by the Commissioner
 114 pursuant to Code Section 34-8-93 pending action of the General Assembly to bring about
 115 conformity with federal law, paragraph (3) of this subsection shall not become effective.
 116 Upon such determination the Commissioner shall take all necessary steps to obtain a
 117 waiver of conformity with federal law from the United States secretary of labor. If such
 118 waiver is granted, paragraph (3) of this subsection shall become effective immediately.
 119 If the United States secretary of labor determines that paragraph (3) of this subsection
 120 could be implemented in conformity with federal law if procedurally adjusted by the
 121 Commissioner, the Commissioner shall exercise the authority granted under Code Section
 122 34-8-93 to make such adjustments and paragraph (3) of this subsection shall become
 123 effective immediately following such adjustment. If the United States secretary of labor
 124 determines that paragraph (3) of this subsection is in conformity with federal law,
 125 paragraph (3) of this subsection shall become effective immediately.

126 (2) In the event paragraph (3) of this subsection becomes effective, it shall not be
127 implemented unless the Commissioner determines that the employer contribution and
128 reimbursement liability shall not increase as a result of such implementation.

129 (3) If this paragraph becomes effective, for calendar quarters beginning on or after
130 July 1, 2009, there shall be a credit to be known as the Georgia Works Tax Credit. The
131 amount of the credit shall be not less than \$25.00 and not more than \$125.00 per
132 individual employee per calendar quarter, as further described in this subsection. The
133 determination of the amount of the credit, within the permissible range, shall be made and
134 periodically revised by the Commissioner based on the Commissioner's evaluation of
135 conditions in the Georgia labor market, the state of the economy, and the State-wide
136 Reserve Ratio. The credit may be claimed by an employer for up to four calendar
137 quarters with respect to an individual hired by that employer for services to be performed
138 in this state under the following conditions:

139 (A) Such individual:

140 (i) Has filed a claim for unemployment compensation in this state and is currently
141 receiving weekly unemployment compensation benefits on that claim under the
142 provisions of Article 7 of this chapter and such benefits are chargeable to the
143 experience rating account of an employer under Code Section 34-8-157;

144 (ii) Has been profiled by the department as likely to exhaust benefits;

145 (iii) Has no return to work date or promise of future employment; and

146 (iv) Has at least eight weeks of benefit eligibility remaining on his or her current
147 claim at the time the employer hires the individual;

148 (B) The credit for each such hired individual per calendar quarter may be claimed on
149 the reports required to be filed under Code Section 34-8-165 as a reduction from
150 amounts otherwise due with respect to each of the four calendar quarters immediately
151 following the hire date of the individual; provided, however, that the credit may not be
152 claimed for any hired individual with respect to more than one hiring by the employer
153 claiming the credit or for more than four calendar quarters with respect to that one
154 hiring;

155 (C) For each calendar quarter for which the credit is claimed, such individual shall be
156 continuously employed by the employer claiming the credit, and such individual's
157 employment with that employer shall consist of at least 30 hours per week during each
158 week of that calendar quarter;

159 (D) The credit shall be timely claimed for the calendar quarter to which the credit is
160 applicable, and in no event later than the last day of the reporting month following the
161 end of the calendar quarter to which the credit is applicable. The credit shall not be
162 refundable. The credit cannot reduce tax liability below zero; provided, however, that

163 the credit, if properly and timely claimed, may be carried forward and applied against
 164 contributions due in any subsequent calendar quarter in the same calendar year as
 165 claimed. Any unused credit remaining at the end of a calendar year may not be carried
 166 forward to another calendar year and shall be deemed to have expired; and
 167 (E) No credit shall be claimed or taken by any employer who fails to timely file any
 168 report or to timely pay all amounts otherwise due for all calendar quarters during the
 169 calendar year for which the credit is claimed. In the event an employer has claimed a
 170 credit under this Code section and fails to timely file any report or to timely pay all
 171 amounts otherwise due during the year the credit is claimed, the amount of any credits
 172 claimed with respect to the calendar year shall be canceled and become delinquent as
 173 of the date originally due under Code Section 34-8-165 and subject to all the provisions
 174 of this article as if no credit had ever been available or claimed."

175 **SECTION 6.**

176 Title 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," is
 177 amended in Code Section 48-7-21, relating to taxation of corporations, by adding at the end
 178 of subsection (b) a new paragraph (16) to read as follows:

179 "(16)(A) For the taxable year beginning on or after January 1, 2010, and prior to
 180 January 1, 2011, there shall be subtracted from taxable income an amount equal to 25
 181 percent of the total net amount of long-term capital gains subject to federal income
 182 taxation.

183 (B) For all taxable years beginning on or after January 1, 2011, there shall be
 184 subtracted from taxable income an amount equal to 50 percent of the total net amount
 185 of long-term capital gains subject to federal income taxation."

186 **SECTION 7.**

187 Said Title 48 is further amended in subsection (a) of Code Section 48-7-27, relating to
 188 computation of taxable net income of individuals, by deleting "and" at the end of paragraph
 189 (14); replacing the period at the end of paragraph (15) with "; and"; and adding a new
 190 paragraph (16) to read as follows:

191 "(16)(A) For the taxable year beginning on or after January 1, 2010, and prior to
 192 January 1, 2011, an amount equal to 25 percent of the total net amount of long-term
 193 capital gains subject to federal income taxation.

194 (B) For all taxable years beginning on or after January 1, 2011, an amount equal to 50
 195 percent of the total net amount of long-term capital gains subject to federal income
 196 taxation."

SECTION 8.

197

198 Said Title 48 is further amended by adding a new Code section as follows:

199 "48-7-29.17.200 (a) As used in this Code section, the term 'creditable employee' means an employee of an
201 employer who:202 (1) Is first employed by the employer on or after the effective date of this Code section
203 and prior to July 1, 2010;204 (2) Was unemployed at least four weeks immediately prior to becoming so employed;205 (3) Remains so employed by the employer for at least 24 consecutive months;206 (4) Executes and provides a notarized affidavit swearing or affirming that such employee
207 is eligible to work in the United States because such person is either a United States
208 citizen or a lawfully present alien according to federal law; and209 (5) During the entire period of such employment receives monthly compensation in an
210 amount at least equal to the average monthly employment compensation benefit paid to
211 persons receiving employment compensation benefits in this state.212 (b) An employer who has one or more creditable employees and who provides a notarized
213 affidavit attesting to use of the federal employment verification system now known as
214 'E-Verify' or any future federal employment verification system shall be eligible to apply
215 for and receive a credit against taxes imposed under this chapter. The amount of the credit
216 shall be \$2,400.00 for each creditable employee. Eligibility for the credit shall be
217 established as of the time the creditable employee completes 24 consecutive months of
218 employment; and the credit shall be claimed for the taxable year in which the twenty-fourth
219 month of such employment is completed.220 (c) In no event shall the total amount of any tax credit under this Code section for a taxable
221 year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed to
222 be carried forward to apply to the taxpayer's succeeding two years' tax liability. No such
223 tax credit shall be allowed the taxpayer against prior years' tax liability.224 (d) The credit shall be claimed and granted in such manner as shall be specified by rules
225 adopted by the commissioner; and such rules shall specifically provide for the manner of
226 establishing the qualifying status of unemployment of the employee prior to employment.
227 The average monthly employment security benefit shall be computed on a monthly basis
228 by the Commissioner of Labor.229 (e) For the purpose of determining whether an employee is employed by the employer
230 under subsection (a) of this Code section, employment may include up to 13 weeks
231 continuous prior service for the employer as a temporary employee of a staffing firm. As
232 used in this Code section, staffing firm means an organization that hires its own employees
233 and assigns them to a client to support or supplement the client's work force in special work

234 situations such as employee absences, temporary skill shortages, seasonal workloads, and
 235 special assignments and projects."

236 **SECTION 9.**

237 Said Title 48 is further amended in Code Section 48-8-49, relating to dealers' sales and use
 238 tax returns, by revising subsection (b) as follows:

239 "(b)(1) As used in this subsection, the term 'estimated tax liability' means a dealer's tax
 240 liability, adjusted to account for any subsequent change in the state sales and use tax rate,
 241 based on the dealer's average monthly payments for the last fiscal year.

242 (2)(A) If the estimated tax liability of a dealer for any taxable period prior to January
 243 1, 2010, exceeds \$5,000.00, the dealer shall file a return and remit to the commissioner
 244 not less than 50 percent of the estimated tax liability for the taxable period on or before
 245 the twentieth day of the period. The amount of the payment of the estimated tax liability
 246 shall be credited against the amount to be due on the return required under subsection
 247 (a) of this Code section. This ~~subsection~~ subparagraph shall not apply to any dealer
 248 unless during the previous fiscal year the dealer's monthly payments exceeded
 249 \$5,000.00 per month for three consecutive months or more nor shall this ~~subsection~~
 250 ~~subparagraph~~ apply to any dealer whose primary business is the sale of motor fuels who
 251 is remitting prepaid state tax under paragraph (2) of subsection (b) of Code Section
 252 48-9-14. No local sales taxes shall be included in determining any estimated tax
 253 liability.

254 (B) If the estimated tax liability of a dealer for any taxable period on or after January 1,
 255 2010, and prior to January 1, 2011, exceeds \$10,000.00, the dealer shall file a return
 256 and remit to the commissioner not less than 50 percent of the estimated tax liability for
 257 the taxable period on or before the twentieth day of the period. The amount of the
 258 payment of the estimated tax liability shall be credited against the amount to be due on
 259 the return required under subsection (a) of this Code section. This subparagraph shall
 260 not apply to any dealer unless during the previous calendar year the dealer's monthly
 261 payments exceeded \$10,000.00 per month for three consecutive months or more nor
 262 shall this subparagraph apply to any dealer whose primary business is the sale of motor
 263 fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code
 264 Section 48-9-14. This paragraph shall cease to apply to a dealer if such dealer falls
 265 below the threshold specified in this subparagraph. No local sales taxes shall be
 266 included in determining any estimated tax liability.

267 (C) If the estimated tax liability of a dealer for any taxable period on or after January 1,
 268 2011, and prior to January 1, 2012, exceeds \$20,000.00, the dealer shall file a return
 269 and remit to the commissioner not less than 50 percent of the estimated tax liability for

270 the taxable period on or before the twentieth day of the period. The amount of the
271 payment of the estimated tax liability shall be credited against the amount to be due on
272 the return required under subsection (a) of this Code section. This subparagraph shall
273 not apply to any dealer unless during the previous calendar year the dealer's monthly
274 payments exceeded \$20,000.00 per month for three consecutive months or more nor
275 shall this subparagraph apply to any dealer whose primary business is the sale of motor
276 fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code
277 Section 48-9-14. This paragraph shall cease to apply to a dealer if such dealer falls
278 below the threshold specified in this subparagraph. No local sales taxes shall be
279 included in determining any estimated tax liability.

280 (D) If the estimated tax liability of a dealer for any taxable period on or after January 1,
281 2012, and prior to January 1, 2013, exceeds \$40,000.00, the dealer shall file a return
282 and remit to the commissioner not less than 50 percent of the estimated tax liability for
283 the taxable period on or before the twentieth day of the period. The amount of the
284 payment of the estimated tax liability shall be credited against the amount to be due on
285 the return required under subsection (a) of this Code section. This subparagraph shall
286 not apply to any dealer unless during the previous calendar year the dealer's monthly
287 payments exceeded \$40,000.00 per month for three consecutive months or more nor
288 shall this subparagraph apply to any dealer whose primary business is the sale of motor
289 fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code
290 Section 48-9-14. This paragraph shall cease to apply to a dealer if such dealer falls
291 below the threshold specified in this subparagraph. No local sales taxes shall be
292 included in determining any estimated tax liability.

293 (E) For any taxable period on or after January 1, 2013, a dealer shall not be required
294 to file a return and remit to the commissioner any estimated tax liability and shall be
295 issued a refund check by the commissioner for the amount of any estimated tax liability
296 which has been remitted and has not been credited against the amount due on the
297 dealer's return under subsection (a) of this Code section.

298 (3) A dealer who in any month does not meet the applicable threshold under
299 subparagraph (A), (B), (C), or (D) of paragraph (2) of this subsection shall be issued a
300 refund check by the commissioner for the amount of any estimated tax liability which has
301 been remitted and has not been credited against the amount due on the dealer's return
302 under subsection (a) of this Code section within 30 days of the determination that such
303 dealer is below such threshold. Prior to or in conjunction with the mailing of such refund
304 check, the commissioner shall mail the dealer the following notice:

305 'Dear Georgia business owner,
 306 This is a refund of your sales tax deposit, which is returned to you in compliance with
 307 the Jobs, Opportunity, and Business Success Act of 2009 (J.O.B.S).

308 The Georgia State House and State Senate passed and the Governor signed the J.O.B.S.
 309 Act (O.C.G.A. 48-8-49) believing that entrepreneurs and business owners, not
 310 government, are best equipped to create jobs and sustainable economic growth for
 311 Georgia.

312 We appreciate your efforts to create true economic stimulus for our great state.

313 Thank you!

314 Georgia General Assembly"

315 **SECTION 10.**

316 Said Title 48 is further amended by revising Article 4, relating to the corporate net worth tax,
 317 in its entirety as follows:

318

319 "ARTICLE 4

320 48-13-70.

321 (a) On and after January 1, 2010, there shall be no corporate net worth taxes whatsoever
 322 levied or collected under this article and no corporate net worth returns are required.

323 (b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall
 324 not be affected by the enactment of this revised article and shall continue to be governed
 325 by the provisions of this article as it existed immediately prior to the effective date of this
 326 Act."

327 **SECTION 11.**

328 This Act shall become effective upon its approval by the Governor or upon its becoming law
 329 without such approval.

330 **SECTION 12.**

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