

The House Committee on Ways and Means offers the following substitute to HB 868:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to imposition, computation, and exemptions from state income tax, so as to provide  
3 for the comprehensive revision of income tax credits for business enterprises located in less  
4 developed areas, designated by tiers, for business enterprises located in less developed areas  
5 consisting of contiguous census tracts, for existing manufacturing and telecommunications  
6 facilities located in certain tier counties, and for establishing new quality jobs or relocating  
7 quality jobs; to provide for procedures, conditions, and limitations; to change certain  
8 provisions so as to correct certain cross-references; to provide for an effective date and  
9 applicability; to provide that this Act shall not abate or affect prosecutions, punishments,  
10 penalties, administrative proceedings or remedies, or civil actions related to certain  
11 violations; to provide for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
15 imposition, computation, and exemptions from state income tax, is amended by revising  
16 subsections (a), (e), (f), (h), and (l) of Code Section 48-7-40, relating to designation of  
17 counties as less developed areas, as follows:

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

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

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27 (2) 'Business enterprise' means any business or the headquarters of any such business  
28 which is engaged in manufacturing, including, but not limited to, the manufacturing of  
29 alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric  
30 vehicle enterprises, warehousing and distribution, processing, telecommunications,  
31 broadcasting, tourism, research and development industries, biomedical manufacturing,  
32 and services for the elderly and persons with disabilities. Such term shall not include  
33 retail businesses. Businesses are eligible for the tax credit provided by this Code section  
34 at an individual establishment of the business based on the classification of the individual  
35 establishment under the North American Industry Classification System. For purposes  
36 of this Code section, the term 'establishment' means an economic unit at a single physical  
37 location where business is conducted or where services or industrial operations are  
38 performed. If more than one business activity is conducted at the establishment, then  
39 only those jobs engaged in the qualifying activity will be eligible for the tax credit  
40 provided by this Code section.

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

46 (4) 'Existing business enterprise' means any business or the headquarters of any such  
47 business which has operated for the immediately preceding three years a facility in this  
48 state which is engaged in manufacturing, including, but not limited to, the manufacturing  
49 of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and  
50 electric vehicle enterprises, warehousing and distribution, processing,  
51 telecommunications, broadcasting, tourism, biomedical manufacturing, or research and  
52 development industries. Such term shall not include retail businesses. Businesses are  
53 eligible for the tax credit provided by this Code section at an individual establishment of  
54 the business based on the classification of the individual establishment under the North  
55 American Industry Classification System. For purposes of this Code section, the term  
56 'establishment' means an economic unit at a single physical location where business is  
57 conducted or where services or industrial operations are performed. If more than one  
58 business activity is conducted at the establishment, then only those jobs engaged in the  
59 qualifying activity will be eligible for the tax credit provided by this Code section.

60 (5) 'New full-time employee job' means a newly created position of employment that was  
61 not previously located in this state, requires a minimum of 35 hours a week, and pays at  
62 or above the average wage earned in the county with the lowest average wage earned in

63 this state, as reported in the most recently available annual issue of the Georgia  
64 Employment and Wages Averages Report of the Department of Labor."

65 "(e)(1) Business enterprises in counties designated by the commissioner of community  
66 affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article  
67 equal to \$3,500.00 annually per eligible new full-time employee job for five years  
68 beginning with the first taxable year in which the new full-time employee job is created  
69 and for the four immediately succeeding taxable years; provided, however, that where the  
70 amount of such credit exceeds a business enterprise's liability for such taxes in a taxable  
71 year, the excess may be taken as a credit against such business enterprise's quarterly or  
72 monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year  
73 \$3,500.00 for each new full-time employee job when aggregated with the credit applied  
74 against taxes under this article. Each employee whose employer receives credit against  
75 such business enterprise's quarterly or monthly payment under Code Section 48-7-103  
76 shall receive credit against his or her income tax liability under Code Section 48-7-20 for  
77 the corresponding taxable year for the full amount which would be credited against such  
78 liability prior to the application of the credit provided for in this paragraph. Credits  
79 against quarterly or monthly payments under Code Section 48-7-103 and credits against  
80 liability under Code Section 48-7-20 established by this paragraph shall not constitute  
81 income to the taxpayer. Business enterprises in counties designated by the commissioner  
82 of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed  
83 under this article equal to \$2,500.00 annually, business enterprises in counties designated  
84 by the commissioner of community affairs as tier 3 counties shall be allowed a job tax  
85 credit for taxes imposed under this article equal to \$1,250.00 annually, and business  
86 enterprises in counties designated by the commissioner of community affairs as tier 4  
87 counties shall be allowed a job tax credit for taxes imposed under this article equal to  
88 \$750.00 annually for each new full-time employee job for five years beginning with the  
89 first taxable year in which the new full-time employee job is created and for the four  
90 immediately succeeding taxable years. Where a business enterprise is engaged in a  
91 competitive project located in a county designated by the commissioner of community  
92 affairs as a tier 2 county and where the amount of the credit provided in this paragraph  
93 exceeds such business enterprise's liability for taxes imposed under this article in a  
94 taxable year, or where a business enterprise is engaged in a competitive project located  
95 in a county designated by the commissioner of community affairs as a tier 3 or tier 4  
96 county and where the amount of the credit provided in this paragraph exceeds 50 percent  
97 of such business enterprise's liability for taxes imposed under this article in a taxable  
98 year, the excess may be taken as a credit against such business enterprise's quarterly or  
99 monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year

100 \$2,500.00 for each new full-time employee job when aggregated with the credit applied  
101 against taxes under this article. Each employee whose employer receives credit against  
102 such business enterprise's quarterly or monthly payment under Code Section 48-7-103  
103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for  
104 the corresponding taxable year for the full amount which would be credited against such  
105 liability prior to the application of the credit provided for in this paragraph. Credits  
106 against quarterly or monthly payments under Code Section 48-7-103 and credits against  
107 liability under Code Section 48-7-20 established by this paragraph shall not constitute  
108 income to the taxpayer. The number of new full-time employee jobs shall be determined  
109 by comparing the monthly average number of full-time employees subject to Georgia  
110 income tax withholding for the taxable year with the corresponding period of the prior  
111 taxable year. In tier 1 counties, those business enterprises that increase employment by  
112 ~~five~~ two or more shall be eligible for the credit. In tier 2 counties, only those business  
113 enterprises that increase employment by ten or more shall be eligible for the credit. In  
114 tier 3 counties, only those business enterprises that increase employment by 15 or more  
115 shall be eligible for the credit. In tier 4 counties, only those business enterprises that  
116 increase employment by 25 or more shall be eligible for the credit. The average wage of  
117 the new jobs created must be above the average wage of the county that has the lowest  
118 average wage of any county in the state to qualify as reported in the most recently  
119 available annual issue of the Georgia Employment and Wages Averages Report of the  
120 Department of Labor. To qualify for a credit under this paragraph, the employer must  
121 make health insurance coverage available to the employee filling the new full-time  
122 employee job; provided, however, that nothing in this paragraph shall be construed to  
123 require the employer to pay for all or any part of health insurance coverage for such an  
124 employee in order to claim the credit provided for in this paragraph if such employer does  
125 not pay for all or any part of health insurance coverage for other employees. Credit shall  
126 not be allowed during a year if the net employment increase falls below the number  
127 required in such tier. ~~In any year in which the net employment increase falls below the~~  
128 ~~number required in such tier, the taxpayer shall forfeit the right to the credit claimed for~~  
129 ~~that taxable year. For the year that the net employment increase falls below the number~~  
130 ~~required in such tier, a taxpayer that forfeits such right is therefore liable for all past taxes~~  
131 ~~imposed by this article for that taxable year and all past payments under Code Section~~  
132 ~~48-7-103 for that taxable year that were foregone by the state as a result of the credits~~  
133 ~~provided by this Code section; provided, however, that Code Section 48-2-40 shall not~~  
134 ~~apply to any such forfeiture.~~ The state revenue commissioner shall adjust the credit  
135 allowed each year for net new employment fluctuations above the minimum level of the  
136 number required in such tier.

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

167 (f) Tax credits for ~~four~~ five years for the taxes imposed under this article shall be awarded  
168 for additional new full-time employee jobs created by business enterprises qualified under  
169 subsection (b), (c), or (c.1) of this Code section. Additional new full-time employee jobs  
170 shall be determined by subtracting the highest total employment of the business enterprise  
171 during years two through five, or whatever portion of years two through five which has  
172 been completed, from the total increased employment. The state revenue commissioner

173 shall adjust the credit allowed in the event of employment fluctuations during the five years  
174 of credit."

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

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

190 "(l) Taxpayers that initially claimed the credit under this Code section for any taxable year  
191 beginning before January 1, ~~2009~~ 2012, shall be governed, for purposes of all such credits  
192 claimed as well as any credits claimed in subsequent taxable years related to such initial  
193 claim, by this Code section as it was in effect for the taxable year in which the taxpayer  
194 made such initial claim."

195 **SECTION 2.**

196 Said article is further amended by revising subsections (a), (e), (f), and (j) of Code Section  
197 48-7-40.1, relating to tax credits for business enterprises located in less developed areas, as  
198 follows:

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

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

208 (2) 'Business enterprise' means any business or the headquarters of any such business  
209 which is engaged in manufacturing, including, but not limited to, the manufacturing of  
210 alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric  
211 vehicle enterprises, warehousing and distribution, processing, telecommunications,  
212 broadcasting, tourism, biomedical manufacturing, and research and development  
213 industries. Such term shall not include retail businesses. Businesses are eligible for the  
214 tax credit provided by this Code section at an individual establishment of the business  
215 based on the classification of the individual establishment under the North American  
216 Industry Classification System. For purposes of this Code section, the term  
217 'establishment' means an economic unit at a single physical location where business is  
218 conducted or where services or industrial operations are performed. If more than one  
219 business activity is conducted at the establishment, then only those jobs engaged in the  
220 qualifying activity will be eligible for the tax credit provided by this Code section."

221 "(e) Business enterprises in areas designated by the commissioner of community affairs  
222 as less developed areas shall be allowed a job tax credit for taxes imposed under this  
223 article equal to \$3,500.00 annually per eligible new full-time employee job for five years  
224 beginning with the first taxable year in which the new full-time employee job is created  
225 and for the four immediately succeeding taxable years; provided, however, that where the  
226 amount of such credit exceeds a business enterprise's liability for such taxes in a taxable  
227 year, the excess may be taken as a credit against such business enterprise's quarterly or  
228 monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year  
229 \$3,500.00 for each new full-time employee job when aggregated with the credit applied  
230 against taxes under this article. Each employee whose employer receives credit against  
231 such business enterprise's quarterly or monthly payment under Code Section 48-7-103  
232 shall receive credit against his or her income tax liability under Code Section 48-7-20 for  
233 the corresponding taxable year for the full amount which would be credited against such  
234 liability prior to the application of the credit provided for in this subsection. Credits  
235 against quarterly or monthly payments under Code Section 48-7-103 and credits against  
236 liability under Code Section 48-7-20 established by this subsection shall not constitute  
237 income to the taxpayer. The number of new full-time jobs shall be determined by  
238 comparing the monthly average number of full-time employees subject to Georgia  
239 income tax withholding for the taxable year with the corresponding period of the prior  
240 taxable year. Only those business enterprises that increase employment by five or more  
241 in a less developed area shall be eligible for the credit; provided, however, that within  
242 areas of pervasive poverty as designated under paragraphs (2) and (4) of subsection (c)  
243 of this Code section businesses shall only have to increase employment by two or more  
244 jobs in order to be eligible for the credit, provided that, if a business only increases

245 employment by two jobs, the persons hired for such jobs shall not be married to one  
 246 another. The average wage of the new jobs created must be above the average wage of  
 247 the county that has the lowest wage of any county in the state to qualify as reported in the  
 248 most recently available annual issue of the Georgia Employment and Wages Averages  
 249 Report of the Department of Labor. To qualify for a credit under this subsection, the  
 250 employer must make health insurance coverage available to the employee filling the new  
 251 full-time job; provided, however, that nothing in this subsection shall be construed to  
 252 require the employer to pay for all or any part of health insurance coverage for such an  
 253 employee in order to claim the credit provided for in this subsection if such employer  
 254 does not pay for all or any part of health insurance coverage for other employees. Credit  
 255 shall not be allowed during a year if the net employment increase falls below five or two,  
 256 as applicable. ~~In any year in which the net employment increase falls below five or two,  
 257 as applicable, the taxpayer shall forfeit the right to the credit claimed for that taxable  
 258 year. For the year that the net employment increase falls below five or two, as applicable,  
 259 a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this  
 260 article for that taxable year and all past payments under Code Section 48-7-103 for that  
 261 taxable year that were foregone by the state as a result of the credits provided by this  
 262 Code section; provided, however that Code Section 48-2-40 shall not apply to any such  
 263 forfeiture.~~ The state revenue commissioner shall adjust the credit allowed each year for  
 264 net new employment fluctuations above the minimum level of five or two.

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

273 "(j) Taxpayers that initially claimed the credit under this Code section for any taxable year  
 274 beginning before January 1, ~~2009~~ 2012, shall be governed, for purposes of all such credits  
 275 claimed as well as any credits claimed in subsequent taxable years related to such initial  
 276 claim, by this Code section as it was in effect for the taxable year in which the taxpayer  
 277 made such initial claim."

### 278 SECTION 3.

279 Said article is further amended by revising subsection (e) of Code Section 48-7-40.12,  
 280 relating to tax credit for qualified research expenses, as follows:



281 ~~"(e) In the first five years of a newly formed business enterprise's operations in this state,~~  
 282 ~~where~~ Where the amount of a credit claimed under this Code section exceeds 50 percent  
 283 ~~of a taxpayer's liability for such taxes~~ the business enterprise's remaining Georgia net  
 284 income tax liability after all other credits have been applied in a taxable year, the excess  
 285 may be taken as a credit against such taxpayer's quarterly or monthly payment under Code  
 286 Section 48-7-103. Each employee whose employer receives credit against such taxpayer's  
 287 quarterly or monthly payment under Code Section 48-7-103 shall receive a credit against  
 288 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable  
 289 year for the full amount which would be credited against such liability prior to the  
 290 application of the credit provided for in this subsection. Credits against quarterly or  
 291 monthly payments under Code Section 48-7-103 and credits against liability under Code  
 292 Section 48-7-20 established by this subsection shall not constitute income to the taxpayer."

293

#### SECTION 4.

294 Said article is further amended by revising Code Section 48-7-40.15, relating to alternative  
 295 tax credits for base year port traffic increases, as follows:

296 "48-7-40.15.

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

298 (1) 'Base year port traffic' means:

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

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

314 (2) 'Broadcasting' means the transmission or licensing of audio, video, text, or other  
 315 programming content to the general public, subscribers, or to third parties via radio,  
 316 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture

317 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'  
 318 is limited to establishments classified under the 2007 North American Industry  
 319 Classification System Codes 515, broadcasting; ~~516~~, 519, Internet publishing and  
 320 broadcasting; 517, telecommunications; and 512, motion picture and sound recording  
 321 industries.

322 (3) 'Business enterprise' means any business or the headquarters of any such business  
 323 which is engaged in manufacturing, including, but not limited to, the manufacturing of  
 324 alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric  
 325 vehicle enterprises, warehousing and distribution, processing, telecommunications,  
 326 broadcasting, tourism, biomedical manufacturing, and research and development  
 327 industries. Such term but shall not include retail businesses. Businesses are eligible for  
 328 the tax credit provided by subsection (b) of this Code section at an individual  
 329 establishment of the business based on the classification of the individual establishment  
 330 under the North American Industry Classification System. For purposes of this Code  
 331 section, the term 'establishment' means an economic unit at a single physical location  
 332 where business is conducted or where services or industrial operations are performed.  
 333 If more than one business activity is conducted at the establishment, then only those jobs  
 334 engaged in the qualifying activity will be eligible for the tax credit provided by this Code  
 335 section.

336 (4) 'Port facility' means any privately owned or publicly owned facility located within  
 337 this state through which product is transported by way of a waterborne ship or vehicle to  
 338 or from destinations outside this state.

339 (5) 'Port traffic' means:

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

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

347 (6) 'Product' means a marketable product or component of a product which has an  
 348 economic value to the wholesale or retail consumer and is ready to be used without  
 349 further alteration of its form or a product or material which is marketed as a prepared  
 350 material or is a component in the manufacturing and assembly of other finished products.

351 (7) 'Qualified investment property' means all real and personal property purchased or  
 352 acquired by a taxpayer for use in the construction of an additional manufacturing or  
 353 telecommunications facility to be located in this state or in the expansion of an existing

354 manufacturing or telecommunications facility located in this state, including, but not  
355 limited to, moneys expended on land acquisition, improvements, buildings, building  
356 improvements, and machinery and equipment to be used in the manufacturing or  
357 telecommunications facility. The department shall promulgate rules defining eligible  
358 manufacturing facilities, telecommunications facilities, and qualified investment property  
359 pursuant to this Code section.

360 (b)(1) In the case of any business enterprise which has increased its port traffic of  
361 products during the previous 12 month period by more than 10 percent above its base  
362 year port traffic and is qualified to claim a job tax credit under Code Section 48-7-40 or  
363 48-7-40.1 for jobs added at any time on or after January 1, 1998, there shall be allowed  
364 an additional \$1,250.00 job tax credit against the tax imposed under this article.

365 (2) The tax credit described in this subsection shall be allowed subject to the conditions  
366 and limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to  
367 the credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that  
368 such credit shall not be allowed during a year if the port traffic does not remain above the  
369 minimum level established in this Code section.

370 (c) In the case of any business enterprise which has increased its port traffic of products  
371 during the previous 12 month period by more than 10 percent above its base year port  
372 traffic and is qualified to claim a tax credit under Code Section 48-7-40.2, 48-7-40.3,  
373 48-7-40.4, 48-7-40.7, 48-7-40.8, or 48-7-40.9 upon qualified investment property added  
374 at any time on or after January 1, 1998, there shall be allowed a credit against the tax  
375 imposed under this article in an amount equal to the applicable percentage amount  
376 otherwise allowed under Code Section 48-7-40.2 or 48-7-40.7 to business enterprises for  
377 the cost of such property. The tax credit described in this subsection shall be allowed  
378 subject to the conditions and limitations set forth in Code Section 48-7-40.2 or 48-7-40.7,  
379 as applicable, except that such property may be placed in service in any county without  
380 regard to its tier designation. Such credit shall also be in lieu of and not in addition to the  
381 credit authorized under Code Sections 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7,  
382 48-7-40.8, and 48-7-40.9.

383 (d) No business enterprise shall be authorized to claim the credits provided for in both  
384 subsections (b) and (c) of this Code section on a tax return for any taxable year unless such  
385 business enterprise has increased its port traffic of products during the previous 12 month  
386 period by more than 20 percent above its base year port traffic, has increased employment  
387 by 400 or more no sooner than January 1, 1998, and has purchased or acquired qualified  
388 investment property having an aggregate cost in excess of \$20 million no sooner than  
389 January 1, 1998.

390 (e) The credit granted under this Code section shall be subject to the following conditions  
391 and limitations:

392 (1) For every year in which a taxpayer claims the credit, the taxpayer shall attach a  
393 schedule to the taxpayer's state income tax return which shall set forth the following  
394 information, as a minimum, in addition to the information required under Code Sections  
395 48-7-40, 48-7-40.1, and 48-7-40.2 or 48-7-40.7:

396 (A) A description of how the base year port traffic and the increase in port traffic was  
397 determined;

398 (B) The amount of the base year port traffic;

399 (C) The amount of the increase in port traffic for the taxable year, including  
400 information which demonstrates an increase in port traffic in excess of the minimum  
401 amount required to claim the tax credit under this Code section;

402 (D) Any tax credit utilized by the taxpayer in prior years;

403 (E) The amount of tax credit carried over from prior years;

404 (F) The amount of tax credit utilized by the taxpayer in the current taxable year; and

405 (G) The amount of tax credit to be carried over to subsequent tax years.

406 (2)(A) Any tax credit claimed under subsection (b) of this Code section but not used  
407 in any taxable year may be carried forward for ten years from the close of the taxable  
408 year in which the qualified jobs were established, provided that the increase in port  
409 traffic remains above the minimum levels established in Code Section 48-7-40 or  
410 48-7-40.1 and this Code section, respectively.

411 (B) Any tax credit claimed under subsection (c) of this Code section in lieu of Code  
412 Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 but not used in any taxable year may be  
413 carried forward for ten years from the close of the taxable year in which the qualified  
414 investment property was acquired, provided that the increase in port traffic remains  
415 above the minimum level established in this Code section and the qualified investment  
416 property remains in service.

417 (3)(A) Any tax credit claimed under subsection (c) of this Code section in lieu of Code  
418 Section 48-7-40.7, 48-7-40.8, or 48-7-40.9 shall be allowed for the ensuing ten taxable  
419 years following the taxable year the qualified investment property was first placed in  
420 service, provided that the increase in port traffic remains above the minimum level  
421 established in this Code section and the qualified investment property remains in  
422 service.

423 (B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2,  
424 48-7-40.3, or 48-7-40.4 and taken in any one taxable year shall be limited to an amount  
425 not greater than 50 percent of the taxpayer's state income tax liability which is  
426 attributable to income derived from operations in this state for that taxable year.

427 (C) The tax credit established by this Code section in addition to that pursuant to Code  
 428 Section 48-7-40 or 48-7-40.1 and taken in any one taxable year shall be limited to an  
 429 amount not greater than 50 percent of the taxpayer's state income tax liability which is  
 430 attributable to income derived from operations in this state for that taxable year.

431 (D) The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new  
 432 eligibility for any succeeding taxpayer, but any unused credit may be transferred and  
 433 continued by any transferee of the taxpayer."

434 **SECTION 5.**

435 Said article is further amended by revising Code Section 48-7-40.17, relating to establishing  
 436 or relocating headquarters and tax credit, as follows:

437 "48-7-40.17.

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

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

442 (2) 'New quality job' means employment for an individual which:

443 (A) Is located in this state;

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

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

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

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

450 (b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this  
 451 state which elects not to receive the tax credits provided for by Code Sections 48-7-40,  
 452 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  
 453 jobs and investments created by, arising from, related to, or connected in any way with the  
 454 same project and, within one year of the first date on which the taxpayer pursuant to the  
 455 provisions of Code Section 48-7-101 withholds wages for employees in this state and  
 456 employs at least 50 persons in new quality jobs in this state, shall be allowed a credit for  
 457 taxes imposed under this article:

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

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

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

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

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

473 provided, however, that where the amount of such credit exceeds a taxpayer's liability for  
474 such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's  
475 quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one  
476 taxable year the credit amounts in paragraphs (1) through (5) of this subsection for each  
477 new quality job when aggregated with the credit applied against taxes under this article.  
478 Each employee whose employer receives credit against such taxpayer's quarterly or  
479 monthly payment under Code Section 48-7-103 shall receive a credit against his or her  
480 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the  
481 full amount which would be credited against such liability prior to the application of the  
482 credit provided for in this subsection. Credits against quarterly or monthly payments under  
483 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established  
484 by this subsection shall not constitute income to the taxpayer. For each new quality job  
485 created, the credit established by this subsection may be taken for the first taxable year in  
486 which the new quality job is created and for the four immediately succeeding taxable years;  
487 provided, however, that such new quality jobs must be created within seven years from the  
488 close of the taxable year in which the taxpayer first becomes eligible for such credit. Credit  
489 shall not be allowed during a year if the net employment increase falls below the 50 new  
490 quality jobs required. Any credit received for years prior to the year in which the net  
491 employment increase falls below the 50 new quality jobs required shall not be affected  
492 except as provided in subsection (f) of this Code section. The state revenue commissioner  
493 shall adjust the credit allowed each year for net new employment fluctuations above the 50  
494 new quality jobs required.

495 (c) The number of new quality jobs to which this Code section shall be applicable shall be  
496 determined by comparing the monthly average of new quality jobs subject to Georgia

497 income tax withholding for the taxable year with the corresponding average for the prior  
498 taxable year.

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

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

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

513 ~~(g)~~ Taxpayers that initially claimed the credit under this Code section for any taxable year  
514 beginning before January 1, ~~2009~~ 2012, shall be governed, for purposes of all such credits  
515 claimed as well as any credits claimed in subsequent taxable years related to such initial  
516 claim, by this Code section as it was in effect for the taxable year in which the taxpayer  
517 made such initial claim.

518 ~~(h)~~(g) The state revenue commissioner shall promulgate any rules and regulations  
519 necessary to implement and administer this Code section."

## 520 SECTION 6.

521 (a) This Act shall become effective upon its approval by the Governor or upon its becoming  
522 law without such approval and shall be applicable to all taxable years beginning on or after  
523 January 1, 2012.

524 (b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not  
525 be affected by the passage of this Act and shall continue to be governed by the provisions of  
526 general law as it existed immediately prior to January 1, 2012.

527 (c) This Act shall not abate any prosecution, punishment, penalty, administrative  
528 proceedings or remedies, or civil action related to any violation of law committed prior to  
529 January 1, 2012.

## 530 SECTION 7.

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