

House Bill 868 (AS PASSED HOUSE AND SENATE)

By: Representatives Collins of the 27th, Carter of the 175th, Atwood of the 179th, Hatchett of the 143rd, Clark of the 98th, and others

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 extended job creation
9 period for certain companies; to clarify conditions and limitations on jobs created when a
10 company is acquired; to provide for an effective date and applicability; to provide that this
11 Act shall not abate or affect prosecutions, punishments, penalties, administrative proceedings
12 or remedies, or civil actions related to certain violations; to provide for related matters; to
13 repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

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

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

21 (1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other
22 programming content to the general public, subscribers, or to third parties via radio,
23 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture
24 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'

25 is limited to establishments classified under the 2007 North American Industry
26 Classification System Codes 515, broadcasting; 519, Internet publishing and
27 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
28 industries.

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

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

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

62 (5) 'New full-time employee job' means a newly created position of employment that was
63 not previously located in this state, requires a minimum of 35 hours a week, and pays at
64 or above the average wage earned in the county with the lowest average wage earned in
65 this state, as reported in the most recently available annual issue of the Georgia
66 Employment and Wages Averages Report of the Department of Labor."

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

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

136 ~~apply to any such forfeiture.~~ The state revenue commissioner shall adjust the credit
137 allowed each year for net new employment fluctuations above the minimum level of the
138 number required in such tier.

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

169 (f) Tax credits for ~~four~~ five years for the taxes imposed under this article shall be awarded
170 for additional new full-time employee jobs created by business enterprises qualified under
171 subsection (b), (c), or (c.1) of this Code section. Additional new full-time employee jobs
172 shall be determined by subtracting the highest total employment of the business enterprise

173 during years two through five, or whatever portion of years two through five which has
 174 been completed, from the total increased employment. The state revenue commissioner
 175 shall adjust the credit allowed in the event of employment fluctuations during the five years
 176 of credit."

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

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

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

197 **SECTION 2.**

198 Said article is further amended by revising subsections (a), (e), (f), and (j) of Code Section
 199 48-7-40.1, relating to tax credits for business enterprises located in less developed areas, as
 200 follows:

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

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

208 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
209 industries.

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

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

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

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

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

280

SECTION 3.

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

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

295 **SECTION 4.**

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

298 "48-7-40.15.

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

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

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

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

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

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

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

341 (5) 'Port traffic' means:

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

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

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

353 (7) 'Qualified investment property' means all real and personal property purchased or
354 acquired by a taxpayer for use in the construction of an additional manufacturing or
355 telecommunications facility to be located in this state or in the expansion of an existing
356 manufacturing or telecommunications facility located in this state, including, but not
357 limited to, moneys expended on land acquisition, improvements, buildings, building
358 improvements, and machinery and equipment to be used in the manufacturing or
359 telecommunications facility. The department shall promulgate rules defining eligible
360 manufacturing facilities, telecommunications facilities, and qualified investment property
361 pursuant to this Code section.

362 (b)(1) In the case of any business enterprise which has increased its port traffic of
363 products during the previous 12 month period by more than 10 percent above its base
364 year port traffic and is qualified to claim a job tax credit under Code Section 48-7-40 or
365 48-7-40.1 for jobs added at any time on or after January 1, 1998, there shall be allowed
366 an additional \$1,250.00 job tax credit against the tax imposed under this article.

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

372 (c) In the case of any business enterprise which has increased its port traffic of products
373 during the previous 12 month period by more than 10 percent above its base year port
374 traffic and is qualified to claim a tax credit under Code Section 48-7-40.2, 48-7-40.3,
375 48-7-40.4, 48-7-40.7, 48-7-40.8, or 48-7-40.9 upon qualified investment property added
376 at any time on or after January 1, 1998, there shall be allowed a credit against the tax
377 imposed under this article in an amount equal to the applicable percentage amount
378 otherwise allowed under Code Section 48-7-40.2 or 48-7-40.7 to business enterprises for
379 the cost of such property. The tax credit described in this subsection shall be allowed
380 subject to the conditions and limitations set forth in Code Section 48-7-40.2 or 48-7-40.7,
381 as applicable, except that such property may be placed in service in any county without
382 regard to its tier designation. Such credit shall also be in lieu of and not in addition to the
383 credit authorized under Code Sections 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7,
384 48-7-40.8, and 48-7-40.9.

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

390 investment property having an aggregate cost in excess of \$20 million no sooner than
391 January 1, 1998.

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

394 (1) For every year in which a taxpayer claims the credit, the taxpayer shall attach a
395 schedule to the taxpayer's state income tax return which shall set forth the following
396 information, as a minimum, in addition to the information required under Code Sections
397 48-7-40, 48-7-40.1, and 48-7-40.2 or 48-7-40.7:

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

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

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

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

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

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

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

408 (2)(A) Any tax credit claimed under subsection (b) of this Code section but not used
409 in any taxable year may be carried forward for ten years from the close of the taxable
410 year in which the qualified jobs were established, provided that the increase in port
411 traffic remains above the minimum levels established in Code Section 48-7-40 or
412 48-7-40.1 and this Code section, respectively.

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

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

425 (B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2,
426 48-7-40.3, or 48-7-40.4 and taken in any one taxable year shall be limited to an amount

427 not greater than 50 percent of the taxpayer's state income tax liability which is
428 attributable to income derived from operations in this state for that taxable year.

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

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

436 **SECTION 5.**

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

439 "48-7-40.17.

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

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

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

445 (A) Is located in this state;

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

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

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

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

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

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

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

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

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

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

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

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

499 income tax withholding for the taxable year with the corresponding average for the prior
500 taxable year.

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

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

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

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

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

522 **SECTION 6.**

523 Said article is further amended by revising Code Section 48-7-40.24, relating to the job tax
524 credit for business enterprises, to read as follows:

525 "48-7-40.24.

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

527 (1) 'Business enterprise' means any enterprise or organization, whether corporation,
528 partnership, limited liability company, proprietorship, association, trust, business trust,
529 real estate trust, or other form of organization which is registered and authorized to use
530 the federal employment verification system known as 'E-Verify' or any successor federal
531 employment verification system and is engaged in or carrying on any business activities
532 within this state, except that such term shall not include retail businesses.

533 (2) 'Eligible full-time employee' means an individual holding a full-time employee job
534 created by a qualified project who:

- 535 (A) Possesses a valid Georgia driver's license or identification card issued by the
 536 Georgia Department of Driver Services; or
- 537 (B) Submits a notarized affidavit swearing to be a United States citizen or lawfully
 538 present alien authorized to work in the United States.
- 539 (3) 'Force majeure' means any:
- 540 (A) Explosions, implosions, fires, conflagrations, accidents, or contamination;
- 541 (B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail,
 542 tornadoes, hurricanes, lightning, or other natural calamities or acts of God;
- 543 (C) Acts of war (whether or not declared), carnage, blockade, or embargo;
- 544 (D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot,
 545 public disorder, or violent demonstrations;
- 546 (E) Strikes or other labor disturbances; or
- 547 (F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or
 548 compulsory acquisition of the site or sites of a qualified project or any part thereof;
- 549 but such term shall not include any event or circumstance that could have been prevented,
 550 overcome, or remedied in whole or in part by the taxpayer through the exercise of
 551 reasonable diligence and due care, nor shall such term include the unavailability of funds.
- 552 (4)(A) 'Full-time employee job' and 'full-time job' ~~means~~ mean employment of an
 553 individual which:
- 554 ~~(A)~~(i) Is located in this state at the site or sites of a qualified project or the facility or
 555 facilities resulting therefrom;
- 556 ~~(B)~~(ii) Involves a regular work week of 35 hours or more;
- 557 ~~(C)~~(iii) Has no predetermined end date; and
- 558 ~~(D)~~(iv) Pays at or above the average wage of the county with the lowest average
 559 wage in the state, as reported in the most recently available annual issue of the
 560 Georgia Employment and Wages Averages Report of the Department of Labor.
- 561 (B) For purposes of this paragraph,:
- 562 (i) ~~leased~~ Leased employees ~~will~~ shall be considered employees of the company
 563 using their services and such persons may be counted in determining the company's
 564 job tax credits under this Code section if their employment otherwise ~~meets the~~
 565 ~~definition of full-time job contained herein.~~ satisfies subparagraph (A) of this
 566 paragraph;
- 567 (ii) ~~In addition, an~~ An individual's employment shall not be deemed to have a
 568 predetermined end date solely by virtue of a mandatory retirement age set forth in a
 569 company policy of general application. The employment of any individual in a bona
 570 fide executive, administrative, or professional capacity, within the meaning of Section
 571 13 of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section

572 213(a)(1), as such act existed on January 1, 2002, shall not be deemed to have a
573 predetermined end date solely by virtue of the fact that such employment is pursuant
574 to a fixed-term contract, provided that such contract is for a term of not less than one
575 year; and

576 (iii) When there is a merger or acquisition of another company by a business
577 enterprise whose application for a qualified project has been approved, the existing
578 jobs in this state shall not be counted in calculating the job creation requirement and
579 the credit calculation necessary to qualify for the tax credit under this Code section.
580 Only additional jobs added in this state that meet the requirements of this Code
581 section shall be counted for purposes of calculating the job creation requirement and
582 the credit calculation.

583 (5) 'Job creation requirement' means the requirement that no later than the close of the
584 sixth taxable year following the withholding start date, the business enterprise will have
585 a minimum of 1,800 eligible full-time employees. If at the close of the sixth taxable year
586 following the withholding start date a minimum of \$600 million in qualified investment
587 property has been purchased or acquired by the business enterprise to be used with
588 respect to a qualified project, the job creation requirement shall be extended for an
589 additional two-year period. If at the close of the eighth taxable year following the
590 withholding start date a minimum of \$800 million in qualified investment property has
591 been purchased or acquired by the business enterprise to be used with respect to a
592 qualified project, the job creation requirement shall be extended for an additional
593 four-year period after the sixth taxable year following the withholding start date.

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

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

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

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

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

613 (11) 'Qualified project' means a project which meets the job creation requirement and
 614 either the payroll requirement or qualified investment property requirement. If the
 615 taxpayer selects the qualified investment property requirement as one of the conditions
 616 for its project, the property shall involve the construction of one or more new facilities
 617 in this state or the expansion of one or more existing facilities in this state. For purposes
 618 of this paragraph, the term 'facilities' means all facilities comprising a single project,
 619 including noncontiguous parcels of land, improvements to such land, buildings, building
 620 improvements, and any personal property that is used in the facility or facilities.

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

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

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

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

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

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

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

639 (2) Following the commissioner's referral of the application to a panel composed of the
 640 commissioner of community affairs, the commissioner of economic development, and the
 641 director of the Office of Planning and Budget, ~~said~~ the panel, after reviewing the
 642 application, certifies that the new or expanded facility or facilities will have a significant
 643 beneficial economic effect on the region for which they are planned. The panel shall
 644 make its determination within 30 days after receipt from the commissioner of the
 645 taxpayer's application and any necessary supporting documentation. Although the panel's

646 certification may be based upon other criteria, a project that meets the minimum job
647 creation requirement and either the payroll requirement or qualified investment property
648 requirement, as applicable, specified in paragraph (1) of this subsection will have a
649 significant beneficial economic effect on the region for which it is planned if one of the
650 following additional criteria is met:

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

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

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

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

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

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

666 (d) A business enterprise whose application is approved shall be allowed a tax credit for
667 taxes imposed under this article equal to \$5,250.00 annually per new eligible full-time
668 employee job for five years beginning with the year in which such job is created through
669 year five after such creation; provided, however, that where the amount of such credit
670 exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be
671 taken as a credit against such business enterprise's quarterly or monthly payment under
672 Code Section 48-7-103. The taxpayer may file an election with the commissioner to take
673 such credit against quarterly or monthly payments under Code Section 48-7-103 that
674 become due before the due date of the income tax return on which such credit may be
675 claimed. In the event of such an election, the commissioner shall confirm with the taxpayer
676 a date, which shall not be later than 30 days after receipt of the taxpayer's election, when
677 the taxpayer may begin to take the credit against such quarterly or monthly payments. For
678 any one taxable year the amounts taken as a credit against taxes imposed under this article
679 and against the business enterprise's quarterly or monthly payments under Code Section
680 48-7-103 may not in the aggregate exceed \$5,250.00 per eligible full-time employee job.
681 Each employee whose employer receives credit against such business enterprise's quarterly
682 or monthly payment under Code Section 48-7-103 shall receive a credit against his or her

683 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
 684 full amount which would be credited against such liability prior to the application of the
 685 credit provided for in this subsection. Credits against quarterly or monthly payments under
 686 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
 687 by this subsection shall not constitute income to the taxpayer. To qualify for a credit under
 688 this subsection, the employer must make health insurance coverage available to the
 689 employee filling the new full-time job; provided, however, that nothing in this subsection
 690 shall be construed to require the employer to pay for all or any part of health insurance
 691 coverage for such an employee in order to claim the credit provided for in this subsection
 692 if such employer does not pay for all or any part of health insurance coverage for other
 693 employees.

694 (e) The number of new full-time jobs to which this Code section shall be applicable shall
 695 be determined by comparing the monthly average number of eligible full-time employees
 696 subject to Georgia income tax withholding for the taxable year with the corresponding
 697 period for the prior taxable year.

698 (f) The Subject to the requirements of division (a)(4)(B)(iii) of this Code section, the sale,
 699 merger, acquisition, or bankruptcy of any business enterprise shall not create new
 700 eligibility in any succeeding business entity, but any unused job tax credit may be
 701 transferred and continued by any transferee of the business enterprise.

702 (g) To qualify for the credit provided by this Code section, a new full-time job must be
 703 created by the close of the seventh taxable year following the business enterprise's
 704 withholding start date, unless the purchase or acquisition of qualified investment property
 705 is made as provided in paragraph (5) of subsection (a) of this Code section, in which case
 706 a new full-time job must be created by the close of the eighth taxable year following the
 707 business enterprise's withholding start date based on a \$600 million qualified investment
 708 or the end of the tenth taxable year based on an \$800 million qualified investment. In no
 709 event may a credit be claimed under this Code section for more than 4,500 new full-time
 710 employee jobs created by any one project; provided, however, that the taxpayer may claim
 711 the credits provided by Code Sections 48-7-40 and 48-7-40.1 for any such additional jobs
 712 if the taxpayer meets the terms and conditions thereof.

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

716 (i) Except as provided in subsection (g) of this Code section, a taxpayer who is entitled to
 717 and takes credits provided by this Code section for a qualified project shall not be allowed
 718 to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1, 48-7-40.2,
 719 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,

720 48-7-40.15, 48-7-40.17, or 48-7-40.18 for jobs, investments, child care, or ground-water
 721 usage shifts created by, arising from, related to, or connected in any way with the same
 722 project. Provided such taxpayer otherwise qualifies, such taxpayer may take any credit
 723 authorized by Code Section 48-7-40.5 for the costs of retraining an employee located at the
 724 site or sites of such project or the facility or facilities resulting therefrom, but only for costs
 725 incurred more than five years after the date the facility or facilities first become
 726 operational.

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

749 (k) If the recapture period applicable to a qualified project begins with or before the sixth
 750 taxable year following the taxpayer's withholding start date, or with or before the eighth
 751 taxable year following the taxpayer's withholding start date if the project falls within the
 752 \$600 million in qualified investment property category, or within the tenth taxable year
 753 following the taxpayer's withholding start date if the project falls within the \$800 million
 754 in qualified investment property category, the taxpayer shall, not later than 60 days after
 755 the close of the taxable year immediately preceding the recapture period, file a report with
 756 the commissioner concerning the number of eligible full-time employee jobs created by

757 such project; the wages of such jobs; the qualified investment property purchased or
758 acquired by the taxpayer for the project; and any other information that the commissioner
759 may reasonably require in order to verify that the taxpayer met the job creation requirement
760 and either the payroll requirement or the qualified investment property requirement in such
761 preceding year.

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

785 (m) A taxpayer ~~who~~ that fails to meet the job maintenance requirement or payroll
786 maintenance requirement, or both, for any taxable year within the recapture period because
787 of force majeure may petition the commissioner for relief from such requirement. Such a
788 petition must be made with and at the same time as the report required by subsection (l) of
789 this Code section. If the commissioner determines that force majeure materially affected
790 the taxpayer's ability to meet the job maintenance requirement or payroll maintenance
791 requirement, or both, for such year, but that the portion of the year so affected was six
792 months or less, for purposes of the job maintenance requirement the commissioner shall
793 calculate the taxpayer's monthly average number of eligible full-time employees for

794 purposes of subsection (l) of this Code section by disregarding the affected months and for
 795 purposes of the payroll maintenance requirement the commissioner shall annualize the total
 796 Georgia W-2 reported payroll with respect to a qualified project for the portion of the year
 797 not so affected. If the commissioner determines that the affected portion of the year was
 798 more than six months, the taxable year shall be disregarded in its entirety for purposes of
 799 the job maintenance requirement or payroll maintenance requirement, or both, and the
 800 recapture period applicable to the qualified project shall be extended for an additional year.

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

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

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

814 **SECTION 7.**

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

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

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

824 **SECTION 8.**

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