

House Bill 370

By: Representatives Braddock of the 19th, Stephens of the 164th, Lindsey of the 54th, Maxwell of the 17th, Peake of the 141st, 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, rate, computation, and exemptions from state income taxes, so as to
3 eliminate the classification of counties into tiers; to provide for a job tax credit to apply
4 uniformly throughout the state; to repeal Code Section 50-16-41 of the Official Code of
5 Georgia Annotated, relating to management and rental of public property; to provide for
6 related matters; to provide for an effective date; to repeal conflicting laws; and for other
7 purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
11 imposition, rate, computation, and exemptions from state income taxes, is amended by
12 revising Code Section 48-7-40, relating to designation of counties as less developed areas
13 and tax credits for certain business enterprises, as follows:

14 "48-7-40.

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

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

24 (2) 'Business enterprise' means any business or the headquarters of any such business
25 which is engaged in manufacturing, including, but not limited to, the manufacturing of
26 alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric

27 vehicle enterprises, warehousing and distribution, processing, telecommunications,
28 broadcasting, tourism, research and development industries, biomedical manufacturing,
29 and services for the elderly and persons with disabilities. Such term shall not include
30 retail businesses. Businesses are eligible for the tax credit provided by this Code section
31 at an individual establishment of the business based on the classification of the individual
32 establishment under the North American Industry Classification System. For purposes
33 of this Code section, the term 'establishment' means an economic unit at a single physical
34 location where business is conducted or where services or industrial operations are
35 performed. If more than one business activity is conducted at the establishment, then
36 only those jobs engaged in the qualifying activity will be eligible for the tax credit
37 provided by this Code section.

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

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

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

62 ~~(b)(1) Not later than December 31 of each year, using the most current data available~~
63 ~~from the Department of Labor and the United States Department of Commerce, the~~

64 commissioner of community affairs shall rank and designate as less developed areas all
 65 159 counties in this state using a combination of the following equally weighted factors:
 66 (A) Highest unemployment rate for the most recent 36 month period;
 67 (B) Lowest per capita income for the most recent 36 month period; and
 68 (C) Highest percentage of residents whose incomes are below the poverty level
 69 according to the most recent data available.

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

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

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

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

93 (e)(b)(1) ~~Business enterprises in counties designated by the commissioner of community~~
 94 ~~affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article~~
 95 ~~equal to \$3,500.00 \$2,500.00 annually per eligible new full-time employee job for five~~
 96 ~~years beginning with the first taxable year in which the new full-time employee job is~~
 97 ~~created and for the four immediately succeeding taxable years; provided, however, that~~
 98 ~~where the amount of such credit exceeds a business enterprise's liability for such taxes~~
 99 ~~in a taxable year, the excess may be taken as a credit against such business enterprise's~~
 100 ~~quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one~~

101 taxable year ~~\$3,500.00~~ \$2,500.00 for each new full-time employee job when aggregated
 102 with the credit applied against taxes under this article. Each employee whose employer
 103 receives credit against such business enterprise's quarterly or monthly payment under
 104 Code Section 48-7-103 shall receive credit against his or her income tax liability under
 105 Code Section 48-7-20 for the corresponding taxable year for the full amount which would
 106 be credited against such liability prior to the application of the credit provided for in this
 107 paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103
 108 and credits against liability under Code Section 48-7-20 established by this paragraph
 109 shall not constitute income to the taxpayer. ~~Business enterprises in counties designated~~
 110 ~~by the commissioner of community affairs as tier 2 counties shall be allowed a job tax~~
 111 ~~credit for taxes imposed under this article equal to \$2,500.00 annually, business~~
 112 ~~enterprises in counties designated by the commissioner of community affairs as tier 3~~
 113 ~~counties shall be allowed a job tax credit for taxes imposed under this article equal to~~
 114 ~~\$1,250.00 annually, and business enterprises in counties designated by the commissioner~~
 115 ~~of community affairs as tier 4 counties shall be allowed a job tax credit for taxes imposed~~
 116 ~~under this article equal to \$750.00 annually for each new full-time employee job for five~~
 117 ~~years beginning with the first taxable year in which the new full-time employee job is~~
 118 ~~created and for the four immediately succeeding taxable years. Where a business~~
 119 ~~enterprise is engaged in a competitive project located in a county designated by the~~
 120 ~~commissioner of community affairs as a tier 2 county and where the amount of the credit~~
 121 ~~provided in this paragraph exceeds such business enterprise's liability for taxes imposed~~
 122 ~~under this article in a taxable year, or where a business enterprise is engaged in a~~
 123 ~~competitive project located in a county designated by the commissioner of community~~
 124 ~~affairs as a tier 3 or tier 4 county and where the amount of the credit provided in this~~
 125 ~~paragraph exceeds 50 percent of such business enterprise's liability for taxes imposed~~
 126 ~~under this article in a taxable year, the excess may be taken as a credit against such~~
 127 ~~business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not~~
 128 ~~to exceed in any one taxable year \$2,500.00 for each new full-time employee job when~~
 129 ~~aggregated with the credit applied against taxes under this article. Each employee whose~~
 130 ~~employer receives credit against such business enterprise's quarterly or monthly payment~~
 131 ~~under Code Section 48-7-103 shall receive credit against his or her income tax liability~~
 132 ~~under Code Section 48-7-20 for the corresponding taxable year for the full amount which~~
 133 ~~would be credited against such liability prior to the application of the credit provided for~~
 134 ~~in this paragraph. Credits against quarterly or monthly payments under Code Section~~
 135 ~~48-7-103 and credits against liability under Code Section 48-7-20 established by this~~
 136 ~~paragraph shall not constitute income to the taxpayer. The number of new full-time~~
 137 ~~employee jobs shall be determined by comparing the monthly average number of~~

138 full-time employees subject to Georgia income tax withholding for the taxable year with
 139 the corresponding period of the prior taxable year. ~~In tier 1 counties, those business~~
 140 Business enterprises that increase employment by ~~two~~ ten or more shall be eligible for
 141 the credit. ~~In tier 2 counties, only those business enterprises that increase employment~~
 142 ~~by ten or more shall be eligible for the credit. In tier 3 counties, only those business~~
 143 ~~enterprises that increase employment by 15 or more shall be eligible for the credit. In tier~~
 144 ~~4 counties, only those business enterprises that increase employment by 25 or more shall~~
 145 ~~be eligible for the credit.~~ The average wage of the new jobs created must be above the
 146 average wage of the county that has the lowest average wage of any county in the state
 147 to qualify as reported in the most recently available annual issue of the Georgia
 148 Employment and Wages Averages Report of the Department of Labor. To qualify for a
 149 credit under this paragraph, the employer must make health insurance coverage available
 150 to the employee filling the new full-time employee job; provided, however, that nothing
 151 in this paragraph shall be construed to require the employer to pay for all or any part of
 152 health insurance coverage for such an employee in order to claim the credit provided for
 153 in this paragraph if such employer does not pay for all or any part of health insurance
 154 coverage for other employees. Credit shall not be allowed during a year if the net
 155 employment increase falls below the number required in such tier. ~~The state revenue~~
 156 ~~commissioner shall adjust the credit allowed each year for net new employment~~
 157 ~~fluctuations above the minimum level of the number required in such tier.~~

158 (2) Existing business enterprises shall be allowed an additional tax credit for taxes
 159 imposed under this article equal to \$500.00 per eligible new full-time employee job the
 160 first year in which the new full-time employee job is created. The additional credit shall
 161 be claimed in the first taxable year in which the new full-time employee job is created.
 162 The number of new full-time employee jobs shall be determined by comparing the
 163 monthly average number of full-time employees subject to Georgia income tax
 164 withholding for the taxable year with the corresponding period of the prior taxable year.
 165 ~~In tier 1 counties, those existing~~ Existing business enterprises that increase employment
 166 by five or more shall be eligible for the credit. ~~In tier 2 counties, only those existing~~
 167 ~~business enterprises that increase employment by ten or more shall be eligible for the~~
 168 ~~credit. In tier 3 counties, only those existing business enterprises that increase~~
 169 ~~employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those~~
 170 ~~existing business enterprises that increase employment by 25 or more shall be eligible for~~
 171 ~~the credit.~~ The average wage of the new jobs created must be above the average wage
 172 of the county that has the lowest average wage of any county in the state to qualify as
 173 reported in the most recently available annual issue of the Georgia Employment and
 174 Wages Averages Report of the Department of Labor. To qualify for a credit under this

175 paragraph, the employer must make health insurance coverage available to the employee
 176 filling the new full-time job; provided, however, that nothing in this paragraph shall be
 177 construed to require the employer to pay for all or any part of health insurance coverage
 178 for such an employee in order to claim the credit provided for in this paragraph if such
 179 employer does not pay for all or any part of health insurance coverage for other
 180 employees. Credit shall not be allowed during a year if the net employment increase falls
 181 below the number required ~~in such tier~~. Any credit generated and utilized for years prior
 182 to the year in which the net employment increase falls below the number required ~~in such~~
 183 ~~tier shall not be affected. The state revenue commissioner shall adjust the credit allowed~~
 184 ~~each year for net new employment fluctuations above the minimum level of the number~~
 185 ~~required in such tier. This paragraph shall apply only to new eligible full-time jobs~~
 186 ~~created in taxable years beginning on or after January 1, 2006, and ending no later than~~
 187 ~~taxable years beginning prior to January 1, 2011~~ 2013.

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

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

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

212 ~~(i) Notwithstanding any provision of this Code section to the contrary, in counties~~
 213 ~~recognized and designated as the first through fortieth least developed counties in the tier~~
 214 ~~1 designation, job tax credits shall be allowed as provided in this Code section, in addition~~
 215 ~~to business enterprises or existing business enterprises, to any business of any nature.~~

216 ~~(j)~~(e) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code
 217 section shall be claimed within one year of the earlier of the date the original tax return was
 218 filed or the date such return was due as prescribed in subsection (a) of Code Section
 219 48-7-56, including any approved extensions.

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

223 ~~(h)~~(g) Taxpayers that initially claimed the credit under this Code section for any taxable
 224 year beginning before January 1, ~~2012~~ 2013, shall be governed, for purposes of all such
 225 credits claimed as well as any credits claimed in subsequent taxable years related to such
 226 initial claim, by this Code section as it was in effect for the taxable year in which the
 227 taxpayer made such initial claim."

228

SECTION 2.

229 Said article is further revised by repealing and reserving Code Section 48-7-40.2, relating to
 230 tax credits for manufacturing and telecommunications facilities in tier 1 counties; Code
 231 Section 48-7-40.3, relating to tax credits for manufacturing and telecommunications facilities
 232 in tier 2 counties; Code Section 48-7-40.4, relating to tax credits for manufacturing and
 233 telecommunications facilities in tier 3 or 4 counties; Code Section 48-7-40.7, relating to
 234 optional tax credits for manufacturing and telecommunications facilities in tier 1 counties;
 235 Code Section 48-7-40.8, relating to optional tax credits for manufacturing and
 236 telecommunications facilities in tier 2 counties; Code Section 48-7-40.9, relating to optional
 237 tax credits for manufacturing and telecommunications facilities in tier 3 or 4 counties; Code
 238 Section 48-7-40.15A, relating to additional job credits based on increase in port traffic; and
 239 Code Section 48-7-40.22, relating to tax credits for leased motor vehicles.

240

SECTION 3.

241 Code Section 50-16-41 of the Official Code of Georgia Annotated, relating to management
 242 and rental of public property, is repealed.

243

SECTION 4.

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

246

SECTION 5.

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