House Bill 333

By: Representatives Corbett of the 174th, Houston of the 170th, England of the 116th, Watson of the 172nd, and Pirkle of the 155th

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, computation, and exemptions from state income tax, so as to modify conditions for earning a tax credit for creating certain jobs; to adjust the wages required to earn such tax credit; to increase the value of the tax credit by $500.00 for certain counties; to add a definition; to remove expired provisions; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"48-7-40.

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

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

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

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

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

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

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

(6) 'Target wage' means:

(A) For a county that is recognized and designated by the commissioner of community affairs in accordance with this Code section as one of the first through fortieth least developed counties in this state and that has a population of less than 50,000 with 10 percent or more of such population living in poverty as determined pursuant to subsection (b.1) of this Code section, 70 percent of the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor;

(B) For a county that has a population of less than 50,000 with 10 percent or more of such population living in poverty as determined pursuant to subsection (b.1) of this Code section and that is recognized and designated by the commissioner of community affairs in accordance with this Code section as a tier 2 county or a tier 1 county that is not one of the counties described in subparagraph (A) of this paragraph, 90 percent of the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor; and

(C) For any other county, at least the average wage of the county that has the lowest average wage of any county in this state as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(b)(1) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas all 159 counties in this state using a combination of the following equally weighted factors:

(A) Highest unemployment rate for the most recent 36 month period;

(B) Lowest per capita income for the most recent 36 month period; and

(C) Highest percentage of residents whose incomes are below the poverty level according to the most recent data available.

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

(b.1) On or before December 31of each year, the commissioner of community affairs shall publish a list of Georgia counties that he or she has determined to have a population of less than 50,000 with 10 percent or more of such population living in poverty. Such determination shall be based upon the most recent, reliable, and applicable data published by the United States Bureau of the Census.

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

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

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

(e)(1) Business enterprises in counties designated by the commissioner of community affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article equal to $3,500.00 annually per eligible new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years; provided, however, that where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year $3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer.

(2)(A) Business enterprises in counties designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under this article equal to $2,500.00 annually, business enterprises in counties designated by the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under this article equal to $1,250.00 annually, and business enterprises in counties designated by the commissioner of community affairs as tier 4 counties shall be allowed a job tax credit for taxes imposed under this article equal to $750.00 annually for each new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years.

(B) Where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 2 county and where the amount of the credit provided in this paragraph exceeds such business enterprise's liability for taxes imposed under this article in a taxable year, or where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 3 or tier 4 county and where the amount of the credit provided in this paragraph exceeds 50 percent of such business enterprise's liability for taxes imposed under this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year $2,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer.

(3) The number of new full-time employee jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year.

(4)(A) In tier 1 counties, those business enterprises that increase employment by two or more shall be eligible for the credit.

(B) In tier 2 counties, only those business enterprises that increase employment by ten or more shall be eligible for the credit.

<u>(C)</u> In tier 3 counties, only those business enterprises that increase employment by 15 or more shall be eligible for the credit.

<u>(D)</u> In tier 4 counties, only those business enterprises that increase employment by 25 or more shall be eligible for the credit. ~~The wage of each new job created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.~~

<u>(5)</u> To qualify for a credit ~~under this paragraph~~ <u>allowed pursuant to this Code section</u>, the employer must make health insurance coverage available to the employee filling the new full-time employee job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this ~~paragraph~~ <u>Code section</u> if such employer does not pay for all or any part of health insurance coverage for other employees.

<u>(6)</u> Credit shall not be allowed during a year if the net employment increase falls below the number <u>of new full-time employee jobs</u> required ~~in such tier~~ <u>for a given county as provided in paragraph (4) of this subsection</u>.

<u>(7)</u> The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required ~~in such~~ <u>based on a county's</u> tier.

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

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

(e.1) For each new full-time employee job that is allowed a credit pursuant to subsection (e), (f), or (i) of this Code section, an additional credit in the amount of $500.00 per new full-time employee job shall be added to the amount allowable to be earned and used pursuant to the same conditions, provided that such new full-time employee job is created and maintained in a county recognized and designated by the commissioner of community affairs as:

(1) A tier 1 or a tier 2 county in accordance with the provisions of subsection (b), (c), or (c.1) of this Code section; and

(2) A county that has a population of less than 50,000 with 10 percent or more of such population living in poverty as determined pursuant to subsection (b.1) of this Code section.

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

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

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

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

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

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

(l) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, ~~2012~~ 2020, shall be governed, for purposes of all such credits claimed as well as any credits claimed in subsequent taxable years related to such initial claim, by this Code section as it was in effect for the taxable year in which the taxpayer made such initial claim.″

SECTION 2.

This Act shall become effective on July 1, 2019, and shall be applicable to taxable years beginning on or after January 1, 2020.

SECTION 3.

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