

House Bill 101 (COMMITTEE SUBSTITUTE)

By: Representatives Crowe of the 118th, Stephens of the 164th, Newton of the 127th, Martin of the 49th, and Blackmon of the 146th

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Section 31-8-9.1 of the Official Code of Georgia Annotated, relating to
2 eligibility to receive tax credits, so as to revise a definition; to amend Code Section
3 48-7-29.20 of the Official Code of Georgia Annotated, relating to tax credits for
4 contributions to rural hospital organizations, so as to increase the tax credit limit for
5 contributions by corporate donors; to increase the aggregate limit for tax credits for
6 contributions to rural hospital organizations; to provide for preapproval of proportional
7 amounts of contributions under certain circumstances; to provide for certain timelines; to
8 extend the sunset provision; to amend Article 2 of Chapter 7 of Title 48 of the Official Code
9 of Georgia Annotated, relating to imposition, rate, computation, exemptions, and credits from
10 state income taxes, so as to increase the annual aggregate limit of tax credits available for the
11 qualified education tax credit; to provide for tax credits for certain contributions made by
12 taxpayers to certain mortgage loan originators; to provide for definitions; to provide for an
13 aggregate annual limit; to provide for terms and conditions; to provide for applications and
14 certifications; to provide for the revocation of qualified status; to provide for certain
15 penalties; to provide for the promulgation of rules and regulations; to amend Code Section
16 48-7-29.21 of the Official Code of Georgia Annotated, relating to tax credits for qualified
17 education donations for the purpose of awarding grants to public schools, so as to provide
18 for a sunset date; to amend an Act relating to education and to revenue and taxation to

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19 authorize the Public Education Innovation Fund Foundation to receive private donations to
 20 be used for grants to public schools; to provide for grant criteria; to provide for an income
 21 tax credit for qualified education donations; to provide for conditions and limitations; to
 22 provide for powers, duties, and authority of the state revenue commissioner with respect to
 23 such donations, approved April 27, 2017 (Ga L. 2017, p. 100), so as to repeal a sunset
 24 provision; to provide for related matters; to provide for effective dates and applicability; to
 25 repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 **PART I**
 28 **SECTION 1-1.**

29 Code Section 31-8-9.1 of the Official Code of Georgia Annotated, relating to eligibility to
 30 receive tax credits, is amended by revising paragraph (3) of subsection (a) as follows:

31 "(3) 'Rural hospital organization' means an acute care hospital or rural freestanding
 32 emergency department licensed by the department pursuant to Article 1 of Chapter 7 of
 33 this title that:

34 (A) Has its primary campus ~~Provides inpatient hospital services at a facility~~ located in
 35 a rural county or is a critical access hospital;

36 (B) Participates in both Medicaid and medicare and accepts both Medicaid and
 37 medicare patients;

38 (C) Provides health care services to indigent patients;

39 (D) Has at least 10 percent of its annual net revenue categorized as indigent care,
 40 charity care, or bad debt;

41 (E) Annually files IRS Form 990, Return of Organization Exempt From Income Tax,
 42 with the department, or for any hospital not required to file IRS Form 990, the

43 department will provide a form that collects the same information to be submitted to the
44 department on an annual basis;

45 (F) Is operated by a county or municipal authority pursuant to Article 4 of Chapter 7
46 of this title or is designated as a tax-exempt organization under Section 501(c)(3) of the
47 Internal Revenue Code;

48 (G) Is current with all audits and reports required by law; and

49 (H) Has a three-year average patient margin, as a percent of expense, less than one
50 standard deviation above the state-wide three-year average of organizations defined in
51 subparagraphs (A) through (G) of this paragraph, as calculated by the department. For
52 purposes of this subparagraph, the term 'patient margin' means gross patient revenues
53 less contractual adjustments, bad debt, indigent and charity care, other uncompensated
54 care, and total expenses."

55 SECTION 1-2.

56 Code Section 48-7-29.20 of the Official Code of Georgia Annotated, relating to tax credits
57 for contributions to rural hospital organizations, is amended by revising subsections (b.1),
58 (e), and (k) as follows:

59 "(b.1) From January 1 to June 30 each taxable year, an individual taxpayer shall be limited
60 in its qualified rural hospital organization expenses allowable for credit under this Code
61 section, and the commissioner shall not approve qualified rural hospital organization
62 expenses incurred from January 1 to June 30 each taxable year, which exceed the following
63 limits:

64 (1) In the case of a single individual or a head of household, \$5,000.00;

65 (2) In the case of a married couple filing a joint return, \$10,000.00; or

66 (3) In the case of an individual who is a member of a limited liability company duly
67 formed under state law, a shareholder of a Subchapter 'S' corporation, or a partner in a
68 partnership, ~~\$10,000.00~~ \$25,000.00."

69 "(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code
70 section exceed ~~\$75~~ \$80 million per taxable year.

71 (2)(A) No more than \$4 million of the aggregate limit established by paragraph (1) of
72 this subsection shall be contributed to any individual rural hospital organization in any
73 taxable year. From January 1 to June 30 each taxable year, the commissioner shall only
74 preapprove contributions submitted by individual taxpayers in an amount not to exceed
75 \$2 million, and from corporate donors in an amount not to exceed \$2 million. From
76 July 1 to December 31 each taxable year, subject to the aggregate limit in paragraph (1)
77 of this subsection and the individual rural hospital organization limit in this paragraph,
78 the commissioner shall approve contributions submitted by individual taxpayers and
79 corporations or other entities.

80 (B) In the event an individual or corporate donor desires to make a contribution to an
81 individual rural hospital organization that has received the maximum amount of
82 contributions for that ~~taxable~~ year, the Department of Community Health shall provide
83 the individual or corporate donor with a list, ranked in order of financial need, as
84 determined by the Department of Community Health, of rural hospital organizations
85 still eligible to receive contributions for the ~~taxable~~ year.

86 (C) In the event an individual or corporate donor desires to make a contribution to an
87 individual rural hospital organization that would cause such rural hospital organization
88 to exceed its maximum amount of contributions for that year, the commissioner shall
89 not deny such desired contribution, but shall approve the proportional amount of the
90 desired contribution up to the rural hospital organization's maximum allowed amount;
91 any remainder shall be attributed as provided for in subparagraph (D) of this paragraph.

92 ~~(C)~~(D) In the event that an individual or corporate donor desires to make a contribution
93 to an unspecified or undesignated rural hospital organization, either directly to the
94 department or through a third party that participates in soliciting, administering, or
95 managing donations, such donation shall be attributed to the rural hospital organization

96 ranked with the highest financial need that has not yet received the maximum amount
 97 of contributions for that taxable year, regardless of whether a third party has a
 98 contractual relationship or agreement with such rural hospital organization.

99 ~~(D)~~(E) Any third party that participates in soliciting, advertising, or managing
 100 donations shall provide the complete list of rural hospital organizations eligible to
 101 receive the tax credit provided pursuant to this Code section including their ranking in
 102 order of financial need as determined by the Department of Community Health
 103 pursuant to Code Section 31-8-9.1, to any potential donor regardless of whether a third
 104 party has a contractual relationship or agreement with such rural hospital organization.

105 (3) For purposes of paragraphs (1) and (2) of this subsection, a rural hospital
 106 organization shall notify a potential donor of the requirements of this Code section.
 107 Before making a contribution to a rural hospital organization, the taxpayer shall
 108 electronically notify the department, in a manner specified by the department, of the total
 109 amount of contribution that the taxpayer intends to make to the rural hospital
 110 organization. The commissioner shall preapprove or deny the requested amount or a
 111 portion of such amount, if applicable pursuant to subparagraph (C) of paragraph (2) of
 112 this subsection, within 30 days after receiving the request from the taxpayer and shall
 113 provide written notice to the taxpayer and rural hospital organization of such preapproval
 114 or denial which shall not require any signed release or notarized approval by the taxpayer.
 115 ~~In order to receive a tax credit under this Code section, the taxpayer shall make the~~
 116 ~~contribution to the rural hospital organization within 180 days after receiving notice from~~
 117 ~~the department that the requested amount was preapproved.~~ In order to receive a tax
 118 credit under this Code section, a taxpayer preapproved by the department on or before
 119 September 30 shall make the contribution to the rural hospital organization within 180
 120 days after receiving notice of preapproval from the department, but not later than October
 121 31. A taxpayer preapproved by the department after September 30 shall make the
 122 contribution to the rural hospital organization on or before December 31. If the taxpayer

123 does not comply with this paragraph, the commissioner shall not include this preapproved
124 contribution amount when calculating the limits prescribed in paragraphs (1) and (2) of
125 this subsection.

126 (4)(A) Preapproval of contributions by the commissioner shall be based solely on the
127 availability of tax credits subject to the aggregate total limit established under
128 paragraph (1) of this subsection and the individual rural hospital organization limit
129 established under paragraph (2) of this subsection.

130 (B) Any taxpayer preapproved by the department pursuant to this subsection shall
131 retain their approval in the event the credit percentage in this Code section is modified
132 for the year in which the taxpayer was preapproved.

133 (C) Upon the rural hospital organization's confirmation of receipt of donations that
134 have been preapproved by the department, any taxpayer preapproved by the department
135 pursuant to subsection (c) of this Code section shall receive the full benefit of the
136 income tax credit established by this Code section even though the rural hospital
137 organization to which the taxpayer made a donation does not properly comply with the
138 reports or filings required by this Code section.

139 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse
140 action against donors to rural hospital organizations if the commissioner preapproved a
141 donation for a tax credit prior to the date the rural hospital organization is removed from
142 the Department of Community Health list pursuant to Code Section 31-8-9.1, and all such
143 donations shall remain as preapproved tax credits subject only to the donor's compliance
144 with paragraph (3) of this subsection."

145 "(k) This Code section shall stand automatically repealed on December 31, ~~2024~~ 2028."

146

PART II

147

SECTION 2-1.

148 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
149 imposition, rate, computation, exemptions, and credits from state income taxes, is amended
150 in subsection (f) of Code Section 48-7-29.16, relating to tax credits for contributions to
151 student scholarship organizations, by revising subparagraphs (f)(1)(B) and (f)(1)(C), and by
152 adding a new subparagraph to paragraph (1) to read as follows:

153 "(B) For 2019 through 2022, \$100 million per year; and

154 (C) For 2023 and all subsequent years, \$120 million per year; and

155 (D) For 2024 and all subsequent years, \$130 million per year."

156

PART III

157

SECTION 3-1.

158 Said article is further amended by adding a new Code section to read as follows:

159 "48-7-29.26.

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

161 (1) 'Mortgage loan originator' means an individual who for compensation or gain or in
162 the expectation of compensation or gain takes a residential mortgage loan application or
163 offers or negotiates terms of a residential mortgage loan. Generally, this does not include
164 an individual engaged solely as a loan processor or underwriter except as otherwise
165 provided in subsection (a.1) of Code Section 7-1-1002; a person or entity that only
166 performs real estate brokerage activities and is licensed or registered in accordance with
167 Georgia law unless the person or entity is compensated by a mortgage lender, mortgage
168 broker, or other mortgage loan originator or by any agent of such mortgage lender,
169 mortgage broker, or other mortgage loan originator; and does not include a person or

170 entity solely involved in extensions of credit relating to time-share plans, as that term is
171 defined in 11 U.S.C. Section 101(53D).

172 (2) 'Qualified expenditures' means moneys used to issue or fund qualified mortgages.

173 (3) 'Qualified mortgage' means a mortgage issued by a qualified loan originator to an
174 individual or two related individuals for the purchase of residential real property in this
175 state.

176 (4) 'Qualified mortgage loan originator' means any Georgia nonprofit corporation that:

177 (A) Acts as a mortgage loan originator to make mortgage loans to individuals to
178 promote home ownership or improvements for the disadvantaged;

179 (B) Maintains its status of a tax-exempt organization under Section 501(c)(3) of the
180 Internal Revenue Code of 1986;

181 (C) Promotes affordable housing;

182 (D) Conducts its activities in a manner that serves public or charitable purposes, rather
183 than commercial purposes;

184 (E) Receives funding and revenue and charges fees in a manner that does not
185 incentivize it or its employees to act other than in the best interests of its clients;

186 (F) Compensates its employees in a manner that does not incentivize employees to act
187 other than in the best interests of its clients; and

188 (G) Is exempt from licensure as a mortgage loan originator pursuant to paragraph (13)
189 of subsection (a) of Code Section 7-1-1001.

190 (b)(1) The aggregate amount of tax credits allowed under this Code section shall not
191 exceed \$10 million per calendar year. Each qualified mortgage loan originator shall be
192 limited to accepting \$2 million per year of contributions made under this Code section.

193 (2) Subject to the aggregate limit provided in paragraph (1) of this subsection, from
194 January 1, 2024, through December 31, 2028, each taxpayer shall be allowed a credit
195 against the tax imposed by this chapter for qualified contributions made by the taxpayer
196 on or after January 1, 2024, as follows:

197 (A) In the case of a single individual or a head of household, the actual amount of
198 qualified contributions made or \$5,000.00 per year, whichever is less;

199 (B) In the case of a married couple filing a joint return, the actual amount of qualified
200 contributions made or \$10,000.00 per year, whichever is less;

201 (C) Anything to the contrary contained in subparagraph (A) or (B) of this paragraph
202 notwithstanding, in the case of an individual taxpayer who is a member of a limited
203 liability company duly formed under state law, a shareholder of a Subchapter 'S'
204 corporation, or a partner in a partnership, the actual amount of qualified contributions
205 it made or \$10,000.00, whichever is less; provided, however, that tax credits pursuant
206 to this paragraph shall only be allowed for the portion of the income on which such tax
207 was actually paid by such member of the limited liability company, shareholder of a
208 Subchapter 'S' corporation, or partner in a partnership; or

209 (D) A corporation or other entity not provided for in subparagraphs (A) through (C)
210 of this paragraph shall be allowed a credit against the tax imposed by this chapter, for
211 qualified contributions in an amount not to exceed the actual amount of qualified
212 contributions made or 75 percent of such corporation's or other entity's income tax
213 liability, whichever is less.

214 (3) Nothing in this Code section shall be construed to limit the ability of a qualified
215 mortgage loan originator to receive gifts, grants, and other benefits from any source
216 allowed by law; provided, however, that no qualified mortgage loan originator shall,
217 under this Code section, accept or receive more than \$2 million in contributions in any
218 calendar year.

219 (c) The commissioner shall establish a page on the department's website for the purpose
220 of implementing this Code section. Such page shall contain, at a minimum:

221 (1) The application and requirements for certification as a qualified mortgage loan
222 originator;

223 (2) The current list of all qualified mortgage loan originators;

- 224 (3) The total amount of tax credits remaining and available for preapproval for each year;
225 (4) A web based method for taxpayers seeking the preapproval status for contributions;
226 and
227 (5) The information received by the department from each qualified organization
228 pursuant to paragraph (1) of subsection (g) except for division (g)(1)(B)(iv) of this Code
229 section.
- 230 (d) Any valid qualified mortgage loan originator as a qualified mortgage loan originator
231 shall be certified by the commissioner following the commissioner's receipt of a properly
232 completed application and after the commissioner has confirmed that a single qualified
233 mortgage loan originator has validly designated the applicant as its sole qualified mortgage
234 loan originator. Such application created by the division shall include an agreement
235 submitted by the applicant to fully comply with the terms and conditions of this Code
236 section.
- 237 (e)(1) Prior to making a contribution to any qualified organization, the taxpayer shall
238 electronically notify the department, in a manner specified by the commissioner, of the
239 total amount of contribution that such taxpayer intends to make to such qualified
240 mortgage loan originator.
- 241 (2) Within 30 days after receiving a request for preapproval of contributions, the
242 commissioner shall preapprove, deny, or prorate requested amounts on a first come, first
243 served basis and shall provide notice to such taxpayer and the qualified organization of
244 such preapproval, denial, or proration. Such notices shall not require any signed release
245 or notarized approval by the taxpayer. The preapproval of contributions by the
246 commissioner shall be based solely on the availability of tax credits subject to the
247 aggregate total limit established under paragraph (1) of subsection (b) of this Code
248 section.
- 249 (3) Within 60 days after receiving the preapproval notice issued by the commissioner
250 pursuant to paragraph (2) of this subsection, the taxpayer shall contribute the preapproved

251 amount to the qualified mortgage loan originator or such preapproved contribution
252 amount shall expire. The commissioner shall not include such expired amounts in
253 determining the remaining amount available under the aggregate limit for the respective
254 calendar year.

255 (f)(1) Each qualified mortgage loan originator shall issue to each contributor a letter of
256 confirmation of contribution, which shall include the taxpayer's name, address, tax
257 identification number, the amount of the qualified contribution, the date of the qualified
258 contribution, and the total amount of the credit allowed to the taxpayer.

259 (2) In order for a taxpayer to claim the tax credit allowed under this Code section, all
260 such applicable letters as provided for in paragraph (1) of this subsection shall be attached
261 to the taxpayer's tax return. When the taxpayer files an electronic return, such
262 confirmation shall only be required to be electronically attached to the return if the
263 Internal Revenue Service allows such attachments to be affixed and transmitted to the
264 department. In any such event, the taxpayer shall maintain such confirmation and such
265 confirmation shall only be made available to the commissioner upon request.

266 (3) The commissioner shall allow tax credits for any preapproved contributions made to
267 a mortgage loan originator, if at the time the contributions were made, such mortgage
268 loan originator was a qualified mortgage loan originator at the time of the commissioner's
269 preapproval of the contributions and the taxpayer has otherwise complied with this Code
270 section.

271 (g)(1) Each qualified mortgage loan originator shall annually submit to the department
272 no later than May 15 of each year:

273 (A) A complete copy of its IRS Form 990 including applicable attachments, or for any
274 qualified mortgage originator that is not required by federal law to file an IRS Form
275 990, such mortgage originator shall submit to the commissioner equivalent information
276 on a form prescribed by the commissioner; and

277 (B) A report detailing the contributions received during the calendar year pursuant to
278 this Code section on a date determined by, and on a form provided by, the
279 commissioner which shall include:

280 (i) The total number and dollar value of individual contributions and tax credits
281 approved. Individual contributions shall include contributions made by those filing
282 income tax returns as a single individual or head of household and those filing joint
283 returns;

284 (ii) The total number and dollar value of corporate contributions and tax credits
285 approved;

286 (iii) The total number and dollar value of all qualified expenditures made; and

287 (iv) A list of contributors, including the dollar value of each contribution and the
288 dollar value of each approved tax credit.

289 (2) Except for the information published in accordance with subsection (c) of this Code
290 section, all information or reports relative to this Code section that were provided by
291 mortgage loan originators to the department shall be confidential taxpayer information,
292 governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether such information
293 relates to the contributor or the mortgage loan originator.

294 (h) Each qualified mortgage loan originator shall publicly post on its website a copy of its
295 affiliated mortgage loan originator's prior year's annual budget containing the total amount
296 of funds received for its local governing body. If a qualified mortgage loan originator does
297 not maintain a public website, such information shall be otherwise made available by the
298 qualified mortgage loan originator to the public upon request.

299 (i)(1) A taxpayer shall not be allowed to designate or direct the taxpayer's qualified
300 contributions to any particular purpose or for the direct benefit of any particular
301 individual.

302 (2) A taxpayer that operates, owns, or is a subsidiary of an association, organization, or
303 other entity that contracts directly with a qualified organization shall not be eligible for

304 tax credits allowed under this Code section for contributions made to such qualified
305 mortgage loan originator.

306 (3) In soliciting contributions, no person shall represent or direct that, in exchange for
307 making qualified contributions to any qualified mortgage loan originator, a taxpayer shall
308 receive any direct or particular benefit. The status as a qualified mortgage loan originator
309 shall be revoked for any qualified organization determined to be in violation of this
310 paragraph and shall not be renewed for at least two years.

311 (j)(1) Qualified contributions shall only be used to make qualified expenditures. Each
312 qualified organization shall maintain accurate and current records of all expenditures of
313 such funds and provide such records to the commissioner upon his or her request.

314 (2) A qualified mortgage loan originator that fails to comply with any of the
315 requirements under this Code section shall be given written notice by the department of
316 such failure to comply by certified mail and shall have 90 days from the receipt of such
317 notice to correct all deficiencies.

318 (3) Upon failure to correct all deficiencies within 90 days, the department shall revoke
319 the mortgage loan originator's status as a qualified organization and such entity shall be
320 immediately removed from the department's list of organizations. All applications for
321 preapproval of tax credits for contributions to such mortgage loan originator under this
322 Code section made on or after the date of such removal shall be rejected.

323 (4) Each mortgage loan originator that has had its status revoked and has been delisted
324 pursuant to this Code section shall immediately cease all expenditures of funds received
325 relative to this Code section, and shall transfer all of such funds that are not yet expended,
326 to a properly operating qualified mortgage loan originator within 30 calendar days of its
327 removal from the department's list of qualified mortgage loan originators.

328 (k)(1) No credit shall be allowed under this Code section to a taxpayer for any amount
329 of qualified contributions that were utilized as deductions or exemptions from taxable
330 income.

331 (2) In no event shall the total amount of the tax credit under this Code section for a
 332 taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be
 333 allowed the taxpayer against the succeeding five years' tax liability. No such credit shall
 334 be allowed the taxpayer against prior years' tax liability.

335 (l) The commissioner shall promulgate rules and regulations necessary to implement and
 336 administer the provisions of this Code section.

337 (m) This Code section shall stand repealed and reserved on December 31, 2028."

338 **PART IV**
 339 **SECTION 4-1.**

340 Code Section 48-7-29.21 of the Official Code of Georgia Annotated, relating to tax credits
 341 for qualified education donations for the purpose of awarding grants to public schools, is
 342 amended by revising paragraph (1) of subsection (f) and by adding a new subsection to read
 343 as follows:

344 "(f)(1) In no event shall the aggregate amount of tax credits allowed under this Code
 345 section exceed \$5 million per tax year."

346 "(j) This Code section shall stand repealed and reserved on December 31, 2028."

347 **SECTION 4-2.**

348 An Act relating to education and to revenue and taxation to authorize the Public Education
 349 Innovation Fund Foundation to receive private donations to be used for grants to public
 350 schools; to provide for grant criteria; to provide for an income tax credit for qualified
 351 education donations; to provide for conditions and limitations; to provide for powers, duties,
 352 and authority of the state revenue commissioner with respect to such donations, approved
 353 April 27, 2017 (Ga L. 2017, p. 100), is amended by repealing Section 3.

354

PART V

355

SECTION 5-1.

356 (a) This Act shall become effective on July 1, 2023; provided, however, that Parts I and II
357 and Section 4-1 of this Act shall become effective on January 1, 2024.

358 (b) This Act shall be applicable to taxable years beginning on or after January 1, 2024.

359

SECTION 5-2.

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