

House Bill 212

By: Representatives Park of the 107th, Miller of the 62nd, Drenner of the 85th, Romman of the 97th, Herring of the 145th, 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, exemption, and credits for income taxes, so as to
3 create a tax credit for the production of clean energy; to provide for the calculation of credit
4 amounts; to provide for definitions; to provide for terms and conditions; to provide for
5 transferability; to require the Environmental Protection Division to annually publish
6 greenhouse gas emission rates for purposes of such tax credit; to provide for rules and
7 regulations; to provide for a short title; to provide for related matters; to provide for an
8 effective date and applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 This Act shall be known and may be cited as the "Clean Energy Production Tax Credit Act."

12 **SECTION 2.**

13 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
14 imposition, rate, computation, exemption, and credits for income taxes, is amended by
15 revising Code Section 48-7-40.10, which is reserved, as follows:

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16 "48-7-40.10.

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

18 (1) 'CO2e per KWh,' 'greenhouse gas,' and 'qualified carbon dioxide' shall have the same
19 meaning as set forth in 26 U.S.C. Section 45Y, as effective on January 1, 2025.

20 (2) 'Eligible person' means any person that demonstrates eligibility for the tax credit
21 allowed pursuant to this Code section in accordance with the requirements of this Code
22 section and rules and regulations of the department. Such term shall not include any
23 person or any form of business owned, affiliated, or controlled, in whole or in part, by
24 any company or person which is in default on any tax obligation to the state, any loan
25 made by the state, or any loan guaranteed by the state.

26 (3) 'Greenhouse gas emissions rate' means the amount of greenhouse gases emitted into
27 the atmosphere by a facility in the production of electricity, expressed as grams of CO2e
28 per KWh, as provided by the Environmental Protection Division pursuant to
29 subsection (e) of this Code section. In the case of a facility which produces electricity
30 through combustion or gasification, the greenhouse gas emissions rate for such facility
31 shall be equal to the net rate of greenhouse gases emitted into the atmosphere by such
32 facility, taking into account lifecycle greenhouse gas emissions in the production of
33 electricity, expressed as grams of CO2e per KWh. The amount of greenhouse gases
34 emitted into the atmosphere by a facility in the production of electricity shall not include
35 any qualified carbon dioxide that is captured by the eligible person and disposed of by
36 the eligible person in secure geological storage or utilized by the eligible person.

37 (4) 'Qualified facility' means a facility located in this state which is used for the
38 generation of electricity, is placed in service after July 1, 2025, and for which the
39 greenhouse gas emissions rate is not greater than zero. A facility shall only be deemed
40 a qualified facility during the 10 year period beginning on the date the facility was
41 originally placed in service. Such term shall not include any facility for which a state
42 income tax credit for clean energy investment is allowed for the taxable year.

(b) For taxable years beginning on or after January 1, 2026, a tax credit is allowed against the tax imposed under this article to any eligible person in an amount equal to 3¢ per kilowatt hour of electricity produced by the eligible person at a qualified facility and sold by the eligible person to an unrelated person during the taxable year or, in the case of a qualified facility which is equipped with a metering device which is owned and operated by an unrelated person, sold, consumed, or stored by the eligible person during the taxable year.

(c) The tax credit allowed by this Code section shall be subject to the following conditions and limitations:

(1) If used by the eligible person, in no event shall the amount of the tax credit used in a taxable year exceed the taxpayer's income tax liability. No such credit shall be used against the eligible person's prior years' tax liability;

(2) If transferred or sold to a Georgia taxpayer as provided for in subsection (d) of this Code section, in no event shall the amount of the tax credit used in a taxable year exceed the taxpayer's income tax liability. No such credit shall be used against the taxpayer's prior years' tax liability;

(3) Any unused credit amount shall be allowed to be carried forward for three years from the taxable year for which it was claimed; and

(4) To claim a credit allowed by this Code section, the eligible person shall provide any information required by the department. Every eligible person claiming a credit under this Code section shall maintain and make available for inspection by the department any records that either entity considers necessary to determine and verify the amount of the credit to which the eligible person is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the eligible person, and no credit shall be allowed to an eligible person that fails to maintain adequate records or to make them available for inspection.

(d) Any tax credits allowed to an eligible person pursuant to this Code section and previously claimed but not used by such person against its income tax liability may be transferred or sold in whole or in part by such eligible person to any Georgia taxpayer, subject to the following conditions:

(1) Such eligible person shall make only a single transfer or sale of tax credits earned in a taxable year; provided, however, that the transfer or sale may involve one or more transferees;

(2) Such eligible person shall submit to the department a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. Such notification shall include the tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the department;

(3) The transfer or sale of such tax credit shall not extend the time in which such tax credit can be used. The carry-forward period for a tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;

(4) A transferee shall have only such rights to claim and use the tax credits that were available to such eligible person at the time of the transfer. In the event that such eligible person did not have rights to claim or use any such tax credit at the time of the transfer, the department shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee; and

(5) The transferee shall acquire such tax credits for a minimum of 60 percent of the amount of the tax credits so transferred.

(e) The Environmental Protection Division shall annually publish a table that sets forth the greenhouse gas emission rates for types or categories of facilities, which an eligible person and the department shall use for purposes of this Code section.

95 (f) The department shall promulgate any rules and regulations necessary to implement and
96 administer the provisions of this Code section. Reserved."

97 **SECTION 3.**

98 This Act shall become effective on July 1, 2025, and shall be applicable to taxable years
99 beginning on or after January 1, 2026.

100 **SECTION 4.**

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