

The House Committee on Ways & Means offers the following substitute to HB 276:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and  
2 taxation, so as to provide for a tax credit for woody biomass power generators; to provide for  
3 limits; to provide for taxpayer certification; to provide for transfer of credits, reimbursement  
4 of related audit costs, and recapture of tax credits wrongfully allowed; to authorize  
5 promulgation of regulations; to provide for definitions; to provide for limitations of  
6 exemptions for certain high-technology companies and high-technology data centers; to  
7 extend such exemption for on-site woody biomass power generation; to provide for  
8 definitions; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
12 amended in Article 2 of Chapter 7, relating to imposition, rate, computation, exemptions, and  
13 credits, by adding a new Code section to read as follows:

14 "48-7-40.38.

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

H. B. 276 (SUB)

16 (1) 'Capacity' means the ratio of the net energy produced by a generating facility to the  
17 amount of energy that could have been produced, in the absence of any scheduled or  
18 unscheduled outages, in any selected time period.

19 (2) 'Power generator' means any equipment owned and operated by a customer of an  
20 electric service provider for the production of electrical energy that:

21 (A) Operates on woody biomass;

22 (B) Has a minimum capacity of 50 megawatts; and

23 (C) Is used at least 50 percent capacity during the prior taxable year.

24 (3) 'Woody biomass' means wood residuals that include land-clearing residue, urban  
25 wood residue, and pellets and do not include wood from any United States national forest.

26 (b)(1)(A) A taxpayer shall be allowed tax credits for expenditures made for the  
27 purchase, installation, and readying of a power generator and related components  
28 against the tax imposed by Code Section 48-7-20 in an amount of \$500,000.00 per  
29 megawatt of capacity for a maximum of five taxable years.

30 (B) The aggregate amount of tax credits allowed per taxpayer pursuant to this Code  
31 section shall not exceed \$200 million.

32 (2) The aggregate amount of tax credits allowed pursuant to this Code section shall not  
33 exceed \$1.6 billion.

34 (c) In order to claim the tax credits provided for in this Code section, a taxpayer shall  
35 attach to such taxpayer's state tax return certification from the taxpayer that the  
36 requirements of this Code section have been met and any other information required by the  
37 commissioner.

38 (d)(1) Any tax credits allowed pursuant to this Code section shall be claimed on or  
39 before December 31, 2036.

40 (2)(A) The total amount of the tax credits allowed pursuant to this Code section for a  
41 taxable year may exceed the taxpayer's income tax liability.

42 (B) Tax credits claimed pursuant to this Code section may be carried forward for ten  
43 years from the close of the taxable year in which the credits are claimed, provided that  
44 no such tax credit may be claimed after December 31, 2036.

45 (e) Tax credits claimed pursuant to this Code section but neither used by the taxpayer  
46 against its income tax liability nor refunded may be transferred or sold one time to one  
47 single other Georgia taxpayer, subject to the following conditions:

48 (1) Only the taxpayer that claimed the tax credits allowed pursuant to this Code section  
49 shall make the transfer or sale of such tax credits;

50 (2) The taxpayer that claimed the tax credits allowed pursuant to this Code section shall  
51 submit to the commissioner written notification of any transfer or sale of such tax credits  
52 within 30 days after the transfer or sale of the tax credits. Such written notification shall  
53 include:

54 (A) Such taxpayer's credit balance prior to transfer;

55 (B) The credit certificate number;

56 (C) The remaining balance of credits after transfer;

57 (D) The tax identification number of the transferee;

58 (E) The date of transfer;

59 (F) The amount of credits transferred; and

60 (G) Other information as may be required by the department;

61 (3) Failure to comply with any provision of this subsection shall result in the  
62 disallowance of the tax credits allowed pursuant to this Code section until the taxpayer  
63 that claimed the credits is in full compliance;

64 (4) The transfer or sale of the tax credits shall not extend the time during which such tax  
65 credits may be used. The carry-forward period for tax credits that are transferred or sold  
66 shall begin on the date on which such tax credits were originally claimed; and

67 (5) A transferee shall have only such rights to claim and use the tax credits that were  
68 available to the transferor at the time of the transfer; provided, however, that a transferee

69 shall not be eligible to transfer or receive a refund of such tax credits. To the extent that  
70 the transferor did not have rights to claim or use the tax credits at the time of the transfer,  
71 the commissioner shall disallow the tax credits claimed by the transferee or recapture the  
72 tax credits from the transferee or transferor. The transferee's recourse shall not be against  
73 the commissioner.

74 (f)(1) A taxpayer claiming, transferring, or selling tax credits allowed pursuant to this  
75 Code section shall be required to reimburse the department for any department initiated  
76 audits relating to the tax credits, provided that such amount shall not exceed the value of  
77 the credits claimed by the taxpayer. This paragraph shall not apply to routine tax audits  
78 of such taxpayer that may include the review of the tax credits provided in this Code  
79 section.

80 (2) The commissioner may pursue all remedies available by law as necessary to  
81 recapture tax credits wrongfully allowed or claimed by a taxpayer or a taxpayer's  
82 transferee.

83 (g) The commissioner shall be authorized to promulgate any rules and regulations  
84 necessary to implement and administer this Code section."

## 85 **SECTION 2.**

86 Said title is further amended in Code Section 48-8-3, relating to exemptions regarding state  
87 sales and use tax, by revising paragraphs (68) and (68.1) as follows:

88 "(68)(A)(i) The sale or lease of computer equipment to be incorporated into a facility  
89 or facilities in this state to any high-technology company classified under the 2017  
90 North American Industrial Classification System code 334413, 334614, 511210,  
91 517311, 517312, 517410, 517911, 517919, 518210, 522320, 541330, 541511,  
92 541512, 541513, 541519, 541713, 541715, or 541720, provided that the exemption  
93 allowed under this paragraph shall be limited to those purchases or leases made by  
94 such a high-technology company for calendar years during which the high-technology

95 company made taxable purchases or leases of at least \$15 million worth of such  
96 computer equipment.

97 (ii) Notwithstanding the provisions of division (i) of this subparagraph to the  
98 contrary, on and after January 1, 2024, and ending on December 31, 2028, the  
99 exemption allowed under this paragraph shall be limited such that each person  
100 claiming the exemption allowed by this paragraph shall be subject to paying 10  
101 percent of all taxes imposed by this chapter on the first \$15 million of its eligible  
102 purchases or leases for which an exemption is claimed under this paragraph.

103 (iii)(I) Notwithstanding the provisions of divisions (i) and (ii) of this subparagraph  
104 to the contrary, on and after January 1, 2029, and ending on December 31, 2034, the  
105 exemption provided for by this paragraph shall be limited to high-technology  
106 companies located in any county that includes a habitable barrier island with no  
107 bridge to the mainland and owned by the Department of Natural Resources, and in  
108 counties designated as tier 1 under Code Section 48-7-40 and to high-technology  
109 companies that utilize power generator equipment installed and used behind the  
110 meter at least 50 percent capacity with a minimum capacity of 50 megawatts during  
111 the prior taxable year.

112 (II) As used in this subparagraph, the term:

113 (a) 'Behind the meter' means on the customer's side of the electric service  
114 provider's meter.

115 (b) 'Capacity' means the ratio of the net energy produced by a generating facility  
116 to the amount of energy that could have been produced, in the absence of any  
117 scheduled or unscheduled outages, in any selected time period.

118 (c) 'Power generator' means any equipment owned and operated by a customer of  
119 an electric service provider for the production of electrical energy that:

120 (1) Operates on woody biomass;

121 (2) Is located on the customer's premises;

- 122           (3) Operates in parallel with the electric service provider's distribution facilities;  
123           (4) Is connected to the electric service provider's distribution system on the  
124           customer's side of the electric service provider's meter; and  
125           (5) Is intended primarily to offset part or all of the customer's requirements for  
126           electricity.
- 127           (d) 'Woody biomass' means wood residuals that include land-clearing residue,  
128           urban wood residue, and pellets and do not include wood from any United States  
129           national forest.

130           (B) Any person making a sale or lease of computer equipment to a high-technology  
131           company as specified in subparagraph (A) of this paragraph shall collect the tax  
132           imposed on the sale by this article unless the purchaser furnishes such seller with a  
133           certificate issued by the commissioner certifying that the purchaser is entitled to  
134           purchase the computer equipment without paying the tax. As a condition precedent to  
135           the issuance of the certificate, the commissioner, at such commissioner's discretion,  
136           may require a good and valid bond with a surety company authorized to do business in  
137           this state as surety or may require legal securities, in an amount fixed by the  
138           commissioner, conditioned upon payment by the purchaser of all taxes due under this  
139           article in the event it should be determined that the sale fails to meet the requirements  
140           of this subparagraph.

141           (C)(i) As used in this paragraph, the term 'computer equipment' means any individual  
142           computer or organized assembly of hardware or software, including, but not limited  
143           to, a server farm, mainframe or midrange computer, mainframe driven high-speed  
144           print and mailing devices, and workstations connected to those devices via high  
145           bandwidth connectivity such as a local area network, wide area network, or any other  
146           data transport technology which performs one of the following functions: storage or  
147           management of production data, hosting of production applications, hosting of  
148           application systems development activities, or hosting of applications systems testing.

149 (ii) Such term shall not include:

150 (I) Telephone central office equipment or other voice data transport technology,  
151 including any wireline or wireless telecommunication system;

152 (II) Equipment with imbedded computer hardware or software which is primarily  
153 used for training, product testing, or in a manufacturing process;

154 (III) Computers or devices issued to employees, which shall include, but not be  
155 limited to, smartphones, tablets, wearables, personal computers, and laptops; or

156 (IV) Prewritten computer software.

157 (D) Any corporation, partnership, limited liability company, or any other similar entity  
158 which qualifies for the exemption and is affiliated in any manner with a nonqualified  
159 corporation, partnership, limited liability company, or any other similar entity must  
160 conduct at least a majority of its business with entities with which it has no affiliation.

161 (E) Each high-technology company that has been issued a certificate of exemption  
162 pursuant to this paragraph shall report annually to the commissioner a list of the  
163 facilities for which all computer equipment exempted by this paragraph during the  
164 preceding calendar year was incorporated, as well as the amount of taxes exempted  
165 under this paragraph during the preceding calendar year. Such report shall be filed  
166 within 90 days after the end of the calendar year for which the high-technology  
167 company utilized a certificate of exemption pursuant to this paragraph and shall be  
168 subject to the confidentiality provisions of Code Section 48-2-15. The commissioner  
169 shall not issue a certificate of exemption under this paragraph for the calendar year next  
170 succeeding the reporting date to any high-technology company that has failed to  
171 comply with the reporting required by this subparagraph.

172 (F) The commissioner shall promulgate such rules and regulations as are necessary to  
173 implement the provisions of this paragraph.

174 (68.1)(A) For the period commencing on July 1, 2018, and ending on  
175 December 31, 2031, except as otherwise provided by subparagraph (H) of this

176 paragraph, high-technology data center equipment to be incorporated or used in a  
177 high-technology data center that meets the high-technology data center minimum  
178 investment threshold and other conditions provided in this paragraph.

179 (B) Any person making a sale or lease of high-technology data center equipment shall  
180 collect the tax imposed on such sale by this article unless the purchaser furnishes such  
181 seller with a certificate issued by the commissioner certifying that such sale or lease is  
182 exempted pursuant to this paragraph.

183 (C)(i) The commissioner shall not issue a certificate of exemption from sales and use  
184 tax to a high-technology data center or high-technology data center customer as  
185 provided in this paragraph unless the commissioner makes a determination that the  
186 high-technology data center will more likely than not meet the high-technology data  
187 center minimum investment threshold.

188 (ii) The commissioner may require any information necessary to determine if such  
189 high-technology data center is in compliance with its investment budgeting plan to  
190 meet the high-technology data center minimum investment threshold.

191 (iii)(I) Within 60 days after the end of the seventh year following its exemption  
192 start date, a high-technology data center shall file a final report with the  
193 commissioner listing the expenditures incurred that count toward its minimum  
194 investment threshold, the number of new quality jobs created, and any other  
195 information that the commissioner may reasonably require to determine whether the  
196 high-technology data center has met the minimum investment threshold.

197 (II) If the commissioner determines that a high-technology data center failed to  
198 meet its high-technology data center minimum investment threshold, such  
199 high-technology data center shall be required to repay all taxes exempted or  
200 refunded pursuant to its certificate of exemption issued pursuant to this paragraph  
201 within 90 days after notification of such failure. Interest shall be due with such  
202 repayment at the rate specified in Code Section 48-2-40 computed from the date

203 such taxes would have been due but for this exemption. Such repayment shall be  
204 calculated notwithstanding otherwise applicable periods of limitation for assessment  
205 of taxes under Code Section 48-2-49.

206 (iv)(I) As a condition precedent to the issuance of a certificate of exemption, the  
207 commissioner, at his or her discretion, may require a good and valid bond with a  
208 surety company authorized to do business in this state, in an amount fixed by the  
209 commissioner not to exceed \$20 million. The commissioner shall consider past  
210 performance and in-state investment when determining the value of the bond, if one  
211 is required.

212 (II) The bond that may be required by this division shall be forfeited and paid to the  
213 general fund in an amount representing all taxes and interest required to be repaid  
214 pursuant to division (iii) of this subparagraph if the high-technology data center fails  
215 to meet the high-technology data center minimum investment threshold prior to the  
216 expiration of the seven-year period.

217 (v) The commissioner shall have the authority to revoke the certificate of exemption  
218 at any time he or she believes that the high-technology data center is not likely to  
219 meet its high-technology minimum investment threshold.

220 (vi) Each high-technology data center that has been issued a certificate of exemption  
221 pursuant to this paragraph shall provide a list of high-technology data center  
222 customers that are deploying high-technology data center equipment in its facility and  
223 shall notify the commissioner within 30 days of any change to the list.

224 (D)(i) The commissioner shall require annual reporting by the high-technology data  
225 center of the amount of taxes exempted under this paragraph, the number of new  
226 quality jobs, and the total payroll resulting from construction, maintenance, and  
227 operation in and on its facility during the preceding year.

228 (ii) The commissioner shall issue an annual report to the chairperson of the Senate  
229 Finance Committee and the chairperson of the House Committee on Ways and Means

230 concerning the exemption allowed by this paragraph. Notwithstanding the  
231 confidentiality provisions of Code Section 48-2-15, such report shall include, for the  
232 prior calendar year for each high-technology data center issued a certificate of  
233 exemption pursuant to this paragraph, the amount of tax exempted and the number of  
234 new quality jobs created by each high-technology data center.

235 (E) The commissioner shall promulgate such rules and regulations as are necessary to  
236 implement the provisions of this paragraph.

237 (F) A high-technology data center shall not be entitled to claim any credit authorized  
238 under Code Sections 48-7-40 through 48-7-40.33 or Code Section 36-62-5.1 on its tax  
239 return if it has received a certificate of exemption from the commissioner pursuant to  
240 this paragraph. If a determination is made by the commissioner pursuant to division  
241 (iii) of subparagraph (C) of this paragraph that the high-technology data center must  
242 repay all taxes exempted or refunded pursuant to this paragraph, such high-technology  
243 data center may file amended income tax returns claiming any credit to which it would  
244 have been entitled under the foregoing Code sections but for having claimed the  
245 exemption under this paragraph.

246 (G) As used in this paragraph, the term:

247 (i) 'Exemption start date' means the date on or after July 1, 2018, chosen by the  
248 high-technology data center and indicated on its application filed on or after  
249 January 1, 2019, which begins the seven-year period during which the minimum  
250 investment threshold must be met. A refund claim must be filed for taxes paid on  
251 purchases qualifying for this exemption for any period on or after July 1, 2018, during  
252 which the high-technology data center has not yet applied for and received its  
253 certificate of exemption from the commissioner.

254 (ii) 'High-technology data center' means a facility, campus of facilities, or array of  
255 interconnected facilities in this state that is developed to power, cool, secure, and  
256 connect its own equipment or the computer equipment of high-technology data center

257 customers and that has an investment budget plan which meets the high-technology  
258 data center minimum investment threshold.

259 (iii) 'High-technology data center customer' means a client, tenant, licensee, or end  
260 user of a high-technology data center that signs at least a 36 month contract for  
261 service with the high-technology data center.

262 (iv) 'High-technology data center equipment' means computer equipment as defined  
263 in paragraph (68) of this Code section of a high-technology data center or such  
264 equipment of a high-technology data center customer to be used or deployed in the  
265 high-technology data center; and the materials, components, machinery, hardware,  
266 software, or equipment, including, but not limited to, emergency backup generators,  
267 air handling units, cooling towers, energy storage or energy efficiency technology,  
268 switches, power distribution units, switching gear, peripheral computer devices,  
269 routers, batteries, wiring, cabling, or conduit, which equipment or materials are used  
270 to:

271 (I) Create, manage, facilitate, or maintain the physical and digital environments for  
272 computer equipment;

273 (II) Protect the high-technology data center equipment from physical,  
274 environmental, or digital threats; or

275 (III) Generate or provide constant delivery of power, environmental conditioning,  
276 air cooling, or telecommunications services for the high-technology data center.

277 Such term shall not include real property as defined in Code Section 48-8-3.2. A  
278 high-technology data center may not count high-technology data center equipment  
279 that it purchases or that is purchased by the high-technology data center customer and  
280 subsequently leased to another party more than once for purposes of satisfying the  
281 high-technology data center minimum investment threshold.

282 (v) 'High-technology data center minimum investment threshold' means:

283 (I) For high-technology data centers located in a county in this state having a  
284 population greater than 50,000 according to the United States decennial census of  
285 2010 or any future such census, the creation of 25 new quality jobs and \$250  
286 million in aggregate expenditures incurred over any consecutive seven-year period  
287 between July 1, 2018, and December 31, 2031, on the design and construction of the  
288 high-technology data center and high-technology data center equipment to be used  
289 or incorporated in the high-technology data center;

290 (II) For high-technology data centers located in a county in this state having a  
291 population greater than 30,000 and less than 50,001 according to the United States  
292 decennial census of 2010 or any future such census, the creation of ten new quality  
293 jobs and \$75 million in aggregate expenditures incurred over any consecutive  
294 seven-year period between July 1, 2018, and December 31, 2031, on the design and  
295 construction of the high-technology data center and high-technology data center  
296 equipment to be used or incorporated in the high-technology data center; and

297 (III) For high-technology data centers located in a county in this state having a  
298 population less than 30,001 according to the United States decennial census of 2010  
299 or any future such census, the creation of five new quality jobs and \$25 million in  
300 aggregate expenditures incurred over any consecutive seven-year period between  
301 July 1, 2018, and December 31, 2031, on the design and construction of the  
302 high-technology data center and high-technology data center equipment to be used  
303 or incorporated in the high-technology data center.

304 (vi) 'New quality jobs' shall have the same meaning as provided in paragraph (2) of  
305 subsection (a) of Code Section 48-7-40.17.

306 (H) ~~This paragraph shall stand repealed by operation of law on January 1, 2032.~~

307 (i) On and after January 1, 2032, and ending on December 31, 2037, the exemption  
308 provided for by this paragraph shall be limited to high-technology data centers located  
309 in any county that includes a habitable barrier island with no bridge to the mainland

310 and owned by the Department of Natural Resources and in counties designated as  
311 tier 1 under Code Section 48-7-40 and to high-technology data centers that utilize  
312 power generator equipment installed and used behind the meter at least 50 percent  
313 capacity with a minimum capacity of 50 megawatts during the prior taxable year.

314 (ii) As used in this subparagraph, the term:

315 (I) 'Behind the meter' means on the customer's side of the electric service provider's  
316 meter.

317 (II) 'Capacity' means the ratio of the net energy produced by a generating facility  
318 to the amount of energy that could have been produced, in the absence of any  
319 scheduled or unscheduled outages, in any selected time period.

320 (III) 'Power generator' means any equipment owned and operated by a customer of  
321 an electric service provider for the production of electrical energy that:

322 (a) Operates on woody biomass;

323 (b) Is located on the customer's premises;

324 (c) Operates in parallel with the electric service provider's distribution facilities;

325 (d) Is connected to the electric service provider's distribution system on the  
326 customer's side of the electric service provider's meter; and

327 (e) Is intended primarily to offset part or all of the customer's requirements for  
328 electricity.

329 (IV) 'Woody biomass' means wood residuals that include land-clearing residue,  
330 urban wood residue, and pellets and do not include wood from any United States  
331 national forest;"

### 332 **SECTION 3.**

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