

The Senate Committee on Agriculture and Consumer Affairs offered the following substitute to HB 563:

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, exemptions, and credits, so as to provide for a tax
3 credit for woody biomass power generators; to provide for limits; to provide for taxpayer
4 certification; to provide for transfer of credits, reimbursement of related audit costs, and
5 recapture of tax credits wrongfully allowed; to authorize promulgation of regulations; to
6 provide for definitions; to provide for related matters; to repeal conflicting laws; and for
7 other 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, exemptions, and credits, is amended by adding a new Code
12 section to read as follows:

13 "48-7-40.38.

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

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

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

20 (A) Operates on woody biomass;

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

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

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

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

29 (2) The aggregate amount of tax credits allowed pursuant to this Code section shall not
30 exceed \$200 million.

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

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

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

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

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

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

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

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

52 (B) The credit certificate number;

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

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

55 (E) The date of transfer;

56 (F) The amount of credits transferred; and

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

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

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

64 (5) A transferee shall have only such rights to claim and use the tax credits that were
65 available to the transferor at the time of the transfer; provided, however, that a transferee
66 shall not be eligible to transfer or receive a refund of such tax credits. To the extent that
67 the transferor did not have rights to claim or use the tax credits at the time of the transfer,
68 the commissioner shall disallow the tax credits claimed by the transferee or recapture the

69 tax credits from the transferee or transferor. The transferee's recourse shall not be against
70 the commissioner.

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

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

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

82 **SECTION 2.**

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