

**OUT OF ORDER**

Senators Goodman of the 8th, Anderson of the 24th, Brass of the 6th, Bearden of the 30th, Parent of 44th, and others offered the following amendment #1:

1 *Amend the House amendment to HB 370 (AM 55 0125) by replacing lines 1 through the end*  
2 *with the following:*

3 *Amend the Senate substitute to HB 370 (LC 50 1260S) by replacing lines 1 through the end*  
4 *with the following:*

5 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
6 relating to imposition, rate, computation, exemptions, and credits, so as to provide for a tax  
7 credit for woody biomass power generators; to provide for limits; to provide for taxpayer  
8 certification; to provide for transfer of credits, reimbursement of related audit costs, and  
9 recapture of tax credits wrongfully allowed; to authorize promulgation of regulations; to  
10 provide for definitions; to provide for related matters; to repeal conflicting laws; and for  
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
15 imposition, rate, computation, exemptions, and credits, is amended by adding a new Code  
16 section to read as follows:

17 "48-7-40.38.

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

19 (1) 'Biomass generator' means any equipment 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 (2) 'Capacity' means the ratio of the net energy produced by a generating facility to the  
24 amount of energy that could have been produced, in the absence of any scheduled or  
25 unscheduled outages, in any selected time period.
- 26 (3) 'Woody biomass' means any organic material derived from trees or woody plants,  
27 including but not limited to timber, logging slash, forest thinnings, wood chips, bark,  
28 sawdust, mill residuals, urban woody waste, land-clearing debris, wood pellets, and other  
29 byproducts of forestry, silvicultural, or wood processing operations.
- 30 (b)(1) A taxpayer shall be allowed tax credits for expenditures made for the purchase,  
31 installation, and readying of a biomass generator and related components against the tax  
32 imposed by Code Section 48-7-20 in an amount of \$500,000.00 per megawatt of capacity  
33 for a maximum of five taxable years.
- 34 (2) The aggregate amount of tax credits allowed pursuant to this Code section shall not  
35 exceed \$200 million.
- 36 (c) In order to claim the tax credits provided for in this Code section, a taxpayer shall  
37 attach to such taxpayer's state tax return certification from the taxpayer that the  
38 requirements of this Code section have been met and any other information required by the  
39 commissioner.
- 40 (d)(1) Any tax credits allowed pursuant to this Code section shall be claimed on or  
41 before December 31, 2036.
- 42 (2)(A) The total amount of the tax credits allowed pursuant to this Code section for a  
43 taxable year may exceed the taxpayer's income tax liability.
- 44 (B) Tax credits claimed pursuant to this Code section may be carried forward for ten  
45 years from the close of the taxable year in which the credits are claimed, provided that  
46 no such tax credit may be claimed after December 31, 2036.

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

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

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

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

57 (B) The credit certificate number;

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

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

60 (E) The date of transfer;

61 (F) The amount of credits transferred; and

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

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

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

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

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

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

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

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

87 **SECTION 2.**

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