

The Senate Committee on Insurance and Labor offers the following substitute to HB 439:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to  
2 general provisions regarding insurance, so as to establish qualified low-income community  
3 investment; to provide for a short title; to provide for definitions; to provide that certain  
4 entities may earn credit against state tax liability; to provide for certification of qualified  
5 equity investments; to provide for recapture of credit claimed under certain circumstances;  
6 to provide for certain refundable fees; to provide for a retaliatory tax; to provide for  
7 decertification; to amend Chapter 10 of Title 10 of the Official Code of Georgia Annotated,  
8 relating to seed-capital funds, so as to establish the Invest Georgia Tax Credit; to provide a  
9 short title, to provide definitions; to authorized the board to sell tax credits; to set limits for  
10 sell of tax credits; to provide for certain allocations of tax credits; to provide for reporting of  
11 present value; to provide for an effective date and applicability; to provide for related  
12 matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

14 Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general  
15 provisions regarding insurance, is amended by adding a new Code section to read as follows:

16 "33-1-24.

17 (a) This Code section shall be known and may be cited as the 'Georgia New Markets Jobs  
18 Act.'

19 (b) As used in this Code section, the term:

20 (1) 'Affiliate' means an entity that directly or indirectly through one or more  
21 intermediaries controls, is controlled by, or is under common control with the entity  
22 specified.

23 (2) 'Applicable percentage' means 0 percent for the first two credit allowance dates  
24 and 11 percent for the next five credit allowance dates.

25 (3) 'Credit allowance date' means with respect to any qualified equity investment:  
26

- 27           (A) The date on which such investment is initially made; and  
28           (B) Each of the six anniversary dates of such date thereafter.  
29           (4) 'Department' means the Department of Community Affairs.  
30           (5) 'Invest Georgia Fund' means the fund created under the provisions of Article 2 of  
31           Chapter 10 of Title 10.  
32           (6) 'Letter ruling' means a written interpretation of law to a specific set of facts provided  
33           by the applicant requesting a letter ruling.  
34           (7) 'Long-term debt security' means any debt instrument issued by a qualified community  
35           development entity, at par value or a premium, with an original maturity date of at least  
36           seven years from the date of its issuance, with no acceleration of repayment,  
37           amortization, or prepayment features prior to its original maturity date. The qualified  
38           community development entity that issues the debt instrument may not make cash interest  
39           payments on the debt instrument during the period beginning on the date of issuance and  
40           ending on the final credit allowance date in an amount that exceeds the cumulative  
41           operating income, as defined by regulations adopted under Section 45D of the Internal  
42           Revenue Code of 1986, as amended, of the qualified community development entity for  
43           that period prior to giving effect to the expense of such cash interest payments. The  
44           foregoing shall in no way limit the holder's ability to accelerate payments on the debt  
45           instrument in situations where the qualified community development entity has defaulted  
46           on covenants designed to ensure compliance with this Code section or Section 45D of the  
47           Internal Revenue Code of 1986, as amended.  
48           (8) 'Purchase price' means the amount paid to the qualified community development  
49           entity that issues the qualified equity investment for such qualified equity investment.  
50           (9) 'Qualified active low-income community business' shall have the same meaning  
51           given such term in Section 45D of the Internal Revenue Code of 1986, as amended,  
52           and 26 C.F.R. Section 1.45D-1 but is limited to those businesses, including affiliates of  
53           such businesses, that have fewer than 250 employees and not more than \$10 million in  
54           net income in the previous year at the time the qualified low-income community  
55           investment is made, provided that the employees and net income of affiliates of the  
56           business shall not be aggregated for purposes of satisfying this requirement if the affiliate  
57           business is classified under a different North American Industry Classification system  
58           code. A business shall be considered a qualified active low-income community business  
59           for the duration of the qualified community development entity's investment in, or loan  
60           to, the business if the entity reasonably expects, at the time it makes the investment or  
61           loan, that the business will continue to satisfy the requirements for being a qualified  
62           active low-income community business, other than the size and net income standards,  
63           throughout the entire period of the investment or loan. Such term excludes any business

64 that derives or projects to derive 15 percent or more of its annual revenue from the rental  
 65 or sale of real estate. This exclusion does not apply to a business that is controlled by,  
 66 or under common control with, another business if the second business: (A) does not  
 67 derive or project to derive 15 percent or more of its annual revenue from the rental or sale  
 68 of real estate and (B) is the primary tenant of the real estate leased from the first business.

69 (10) 'Qualified community development entity' shall have the same meaning given such  
 70 term in Section 45D of the Internal Revenue Code of 1986, as amended, provided that  
 71 such entity has entered into, for the current year or any prior year, an allocation  
 72 agreement with the Community Development Financial Institutions Fund of the United  
 73 States Treasury Department with respect to credits authorized by Section 45D of the  
 74 Internal Revenue Code of 1986, as amended, which includes the State of Georgia within  
 75 the service area set forth in such allocation agreement. Such term shall include subsidiary  
 76 community development entities of any such qualified community development entity.

77 (11) 'Qualified equity investment' means any equity investment in, or long-term debt  
 78 security issued by, a qualified community development entity that:

79 (A) Is acquired after the effective date of this Code section at its original issuance  
 80 solely in exchange for cash;

81 (B) Has at least 85 percent of its cash purchase price used by the qualified community  
 82 development entity to make qualified low-income community investments in qualified  
 83 active low-income community businesses located in this state by the first anniversary  
 84 of the initial credit allowance date; and

85 (C) Is designated by the qualified community development entity as a qualified equity  
 86 investment under this paragraph and is certified by the department as not exceeding the  
 87 limitation contained in subsection (g) of this Code section.

88 Such term shall include any qualified equity investment that does not meet the provisions  
 89 of subparagraph (A) of this paragraph if such investment was a qualified equity  
 90 investment in the hands of a prior holder.

91 (12) 'Qualified low-income community investment' means any capital or equity  
 92 investment in, or loan to, any qualified active low-income community business; but, with  
 93 respect to any one qualified active low-income community business, the maximum  
 94 amount of qualified low-income community investments made in such business, on a  
 95 collective basis with all of the businesses' affiliates, with the proceeds of qualified equity  
 96 investments certified pursuant to subsection (f) of this Code section is \$4 million,  
 97 exclusive of qualified low-income community investments made with repaid or redeemed  
 98 qualified low-income community investments or interest or profits realized thereon.

99 (13) 'State tax liability' means any liability incurred by any entity under Code  
 100 Sections 33-3-26, 33-8-4, 48-7-27, and 48-7-31, or, if the tax liability under Code

101 Sections 33-3-26 and 33-8-4 is eliminated or reduced, the term shall also mean any tax  
102 liability imposed on an insurance company or other person that had premium tax liability  
103 under the laws of this state.

104 (c) Any entity that makes a qualified equity investment earns a vested right to credit  
105 against the entity's state tax liability.

106 (d) Any entity that makes a qualified equity investment earns a vested right to credit  
107 against the entity's state tax liability on a tax report filed under this Code section and may  
108 utilize such credit as follows:

109 (1) On each credit allowance date of such qualified equity investment, the entity, or  
110 subsequent holder of the qualified equity investment, shall be entitled to utilize a portion  
111 of such credit during the taxable year, including such credit allowance date;

112 (2) The credit amount shall be equal to the applicable percentage for such credit  
113 allowance date multiplied by the purchase price paid to the qualified community  
114 development entity; and

115 (3) The amount of the credit claimed by an entity shall not exceed the amount of such  
116 entity's state premium tax liability for the tax year for which the credit is claimed. Any  
117 amount of tax credit that the entity is prohibited from claiming in a taxable year as a  
118 result of this Code section may be carried forward for use in any subsequent taxable year.

119 (e) No tax credit claimed by an entity that makes a qualified equity investment under this  
120 Code section shall be refundable or saleable on the open market. Tax credits earned by or  
121 allocated to a partnership, limited liability company, or S-corporation may be allocated to  
122 the partners, members, or shareholders of such entity for their use in accordance with the  
123 provisions of any agreement among such partners, members, or shareholders. Such  
124 allocation shall be not considered a sale for purposes of this Code section.

125 (f)(1) A qualified community development entity that seeks to have an equity investment  
126 or long-term debt security designated as a qualified equity investment that is eligible for  
127 tax credits under this Code section shall apply to the department. The department shall  
128 begin accepting applications on August 1, 2015. The qualified community development  
129 entity shall include the following:

130 (A) Evidence of the applicant's certification as a qualified community development  
131 entity, including evidence of the service area of the entity that includes this state;

132 (B) A copy of an allocation agreement executed by the applicant, or its controlling  
133 entity, and the Community Development Financial Institutions Fund;

134 (C) A certificate executed by an executive officer of the applicant: (i) attesting that the  
135 allocation agreement remains in effect and has not been revoked or cancelled by the  
136 Community Development Financial Institutions Fund and (ii) stating the cumulative  
137 amount of allocations awarded to the applicant by the Community Development

138 Financial Institutions Fund and by other state or states under their New Markets  
139 programs;  
140 (D) A description of the proposed amount, structure, and purchaser of the qualified  
141 equity investment;  
142 (E) Examples of the types of qualified active low-income businesses in which the  
143 applicant, its controlling entity, or affiliates of its controlling entity have invested under  
144 the federal New Markets Tax Credit Program. Applicants are not required to identify  
145 qualified active low-income community businesses in which they will invest when  
146 submitting an application;  
147 (F) A nonrefundable application fee of \$5,000.00. This fee shall be paid to the  
148 department and shall be required of each application submitted;  
149 (G) The refundable performance fee required by paragraph (1) of subsection (j) of this  
150 Code section; and  
151 (H) The amount of qualified equity investment authority the applicant agrees to  
152 designate as a federal qualified equity investment under Section 45D, Internal Revenue  
153 Code, including a copy of the screen from the Community Development Financial  
154 Institutions Funds' Allocation Tracking System of the applicant's remaining federal  
155 qualified equity investment authority or a copy of the Notice of Allocation setting forth  
156 the amount of federal qualified equity investment authority from the Community  
157 Development Financial Institution Fund in the event the allocation agreement  
158 governing such allocation has not been finalized.  
159 (2) A qualified community development entity, on an aggregate basis with all of its  
160 subsidiary qualified community development entities, may not apply to have equity  
161 investments or long-term debt instruments designated as qualified equity investments  
162 under this subsection in excess of the total amount of allocations awarded to such  
163 applicant and its subsidiary qualified community development entities by the Community  
164 Development Financial Institutions Fund under Section 45D of the Internal Revenue  
165 Code of 1986, as amended, and by any other state or states under their New Markets  
166 programs.  
167 (3) Within 30 days after receipt of a completed application containing the information  
168 set forth in paragraph (1) of this subsection, including the payment of the application fee  
169 and the refundable performance fee, the department shall grant or deny the application  
170 in full or in part. If the department denies any part of the application, it shall inform the  
171 qualified community development entity of the grounds for the denial. If the qualified  
172 community development entity provides any additional information required by the  
173 department or otherwise completes its application within 15 business days of the notice  
174 of denial, the application shall be considered completed as of the original date of

175 submission. If the qualified community development entity fails to provide the  
176 information or complete its application within the 15 business day period, the application  
177 shall remain denied and must be resubmitted in full with a new submission date.

178 (4) If the application is complete, the department shall certify the proposed equity  
179 investment or long-term debt security as a qualified equity investment that is eligible for  
180 tax credits under this Code section, subject to the limitations contained in paragraph (5)  
181 of this subsection. The department shall provide written notice of the certification to the  
182 qualified community development entity. The notice shall include the names of those  
183 entities who will earn the credits which may be further allocated pursuant to  
184 subsection (e) of this Code section and their respective credit amounts. If the names of  
185 the entities that are eligible to utilize the credits change due to a transfer of a qualified  
186 equity investment authority under paragraph (6) of this subsection or an allocation  
187 pursuant to subsection (e) of this Code section, the qualified community development  
188 entity shall notify the department of such change.

189 (5) The department shall certify qualified equity investments in the order applications  
190 are received by the department. Applications received on the same day shall be deemed  
191 to have been received simultaneously. For applications that are complete and received  
192 on the same day, the department shall certify, consistent with remaining qualified equity  
193 investment capacity, qualified equity investments for applicants as follows:

194 (A) First, the department shall certify applications by applicants that agree to designate  
195 qualified equity investments as federal qualified equity investments in accordance with  
196 subparagraph (H) of paragraph (1) of this subsection in proportionate percentages based  
197 upon the ratio of the amount of qualified equity investments requested in an application  
198 to be designated as federal qualified equity investments to the total amount of qualified  
199 equity investments to be designated as federal qualified equity investments requested  
200 in all applications received on the same day.

201 (B) After complying with subparagraph (A) of this paragraph, the department shall  
202 certify the qualified equity investments of all other applicants, including the remaining  
203 qualified equity investment authority requested by applicants not designated as federal  
204 qualified equity investments in accordance with subparagraph (A) of this paragraph, in  
205 proportionate percentages based upon the ratio of the amount of qualified equity  
206 investments requested in the applications to the total amount of qualified equity  
207 investments requested in all applications received on the same day.

208 A partial certification shall not decrease the amount of the refundable performance fee  
209 required by paragraph (1) of subsection (j) of this Code section.

210 (6) An approved applicant may transfer all or a portion of its certified qualified equity  
211 investment authority to its controlling entity or any subsidiary qualified community

212 development entity of the controlling entity, provided that the applicant provides the  
213 information required in the application with respect to such transferee and the applicant  
214 notifies the department of such transfer within 30 days of the transfer. The department  
215 shall acknowledge such transfer if requested by the approved applicant.

216 (7) Within 30 days of the applicant receiving notice of certification, the qualified  
217 community development entity or any transferee under paragraph (6) of this subsection  
218 shall issue the qualified equity investment, receive cash in the certified amount, and, if  
219 applicable, designate the required amount of qualified investment authority as a federal  
220 qualified equity investment. The qualified community development entity or transferee  
221 under paragraph (6) of this subsection must provide the department with evidence of the  
222 receipt of the cash investment within ten business days after receipt. If the qualified  
223 community development entity or any transferee under paragraph (6) of this subsection  
224 does not receive the cash investment, does not issue the qualified equity investment  
225 within 30 days following receipt of the certification notice, or, if applicable, does not  
226 designate the required amount of qualified investment authority as a federal qualified  
227 equity investment, the certification shall lapse and the entity may not issue the qualified  
228 equity investment without reapplying to the department for certification. Lapsed  
229 certifications revert back to the department and shall be reissued; first, pro rata to  
230 applicants whose qualified equity investment allocations were reduced under  
231 subparagraph (A) of paragraph (5) of this subsection; second, pro rata to other applicants  
232 whose qualified equity investment allocations were reduced under paragraph (5) of this  
233 subsection; and, thereafter, in accordance with application process.

234 (8) A qualified community development entity that issues qualified equity investments  
235 must notify the department of the names of the entities that are eligible to utilize tax  
236 credits pursuant to subsection (e) of this Code section.

237 (g) Notwithstanding anything to the contrary in this Code section, a total of \$100 million  
238 in qualified equity investments shall be certified. If a pending request made pursuant to  
239 subsection (f) of this Code section cannot be fully certified due to this limit, the department  
240 shall certify the portion that may be certified unless the qualified community development  
241 entity elects to withdraw its request rather than receive partial certification.

242 (h)(1) The department shall recapture from the entity that claimed the credit on a return  
243 the tax credit allowed under this Code section if:

244 (A) Any amount of a federal tax credit available with respect to a qualified equity  
245 investment that is eligible for a credit under this Code section is recaptured under  
246 Section 45D of the Internal Revenue Code of 1986, as amended. In such case, the  
247 department's recapture shall be proportionate to the federal recapture with respect to  
248 such qualified equity investment;

249 (B) The qualified community development entity redeems or makes principal  
250 repayment with respect to a qualified equity investment prior to the seventh anniversary  
251 of the issuance of such qualified equity investment. In such case, the department's  
252 recapture shall be proportionate to the amount of the redemption or repayment with  
253 respect to such qualified equity investment;

254 (C) The qualified community development entity fails to invest an amount equal to 85  
255 percent of the purchase price of the qualified equity investment in qualified low-income  
256 community investments in Georgia within 12 months of the issuance of the qualified  
257 equity investment and maintain at least 85 percent of such level of investment in  
258 qualified low-income community investments in Georgia until the last credit allowance  
259 date for the qualified equity investment. For purposes of this Code section, an  
260 investment shall be considered held by a qualified community development entity even  
261 if the investment has been sold or repaid if the qualified community development entity  
262 reinvests an amount equal to the capital returned to or recovered by the qualified  
263 community development entity from the original investment, exclusive of any profits  
264 realized, in another qualified low-income community investment within 12 months of  
265 the receipt of such capital. Periodic amounts received as repayment of principal  
266 pursuant to regularly scheduled amortization payments on a loan that is a qualified  
267 low-income community investment shall be treated as continuously invested in a  
268 qualified low-income community investment if the amounts are reinvested in one or  
269 more qualified low-income community investments by the end of the following  
270 calendar year. A qualified community development entity shall not be required to  
271 reinvest capital returned from qualified low-income community investments after the  
272 sixth anniversary of the issuance of the qualified equity investment, the proceeds of  
273 which were used to make the qualified low-income community investment, and the  
274 qualified low-income investment community shall be considered held by the qualified  
275 community development entity through the seventh anniversary of the qualified equity  
276 investment's issuance;

277 (D) Any distribution or debt payment in violation of paragraph (1) of subsection (m)  
278 of this Code section; or

279 (E) Any violation of subsection (n), (o), or (p) of this Code section.

280 (2) Recaptured or returned tax credits and the related qualified equity investment  
281 authority revert back to the department and shall be reissued, first, pro rata to other  
282 applicants whose qualified equity investment allocations were reduced under  
283 paragraph (5) of subsection (f) of this Code section and, thereafter, in accordance with  
284 the application process.

285 (i) Enforcement of each of the recapture provisions in subsection (h) of this Code section  
286 shall be subject to a six-month cure period. No recapture shall occur until the qualified  
287 community development entity shall have been given notice of noncompliance and  
288 afforded six months from the date of such notice to cure the noncompliance.

289 (j)(1) A qualified community development entity that seeks to have an equity investment  
290 or long-term debt security designated as a qualified equity investment and eligible for tax  
291 credits under this subsection shall pay a fee in the amount one-half of 1 percent of the  
292 amount of the equity investment or long-term debt security requested to be designated as  
293 a qualified equity investment to the department for deposit in the New Markets  
294 Performance Guarantee Account, which is hereby established. The entity shall forfeit the  
295 fee in its entirety without the benefit of subsection (i) of this Code section if:

296 (A) The qualified community development entity and its subsidiary qualified  
297 community development entities fail to issue the total amount of qualified equity  
298 investments certified by the administrator and receive cash in the total amount certified  
299 under paragraph (5) of subsection (f) of this Code section; or

300 (B) The qualified community development entity or any subsidiary qualified  
301 community development entity that issues a qualified equity investment certified under  
302 this subsection fails to make qualified low-income community investments in qualified  
303 active low-income community businesses in this state equal to at least 85 percent of the  
304 purchase price of the qualified equity investment in compliance with subsection (p) of  
305 this Code section by the second credit allowance date of such qualified equity  
306 investment.

307 (2) The fee required under paragraph (1) of this subsection shall be paid to the  
308 department and held in the New Markets Performance Guarantee Account until such time  
309 as compliance with the provisions of this subsection shall have been established. The  
310 qualified community development entity may request a refund of the fee from the  
311 department no sooner than 30 days after the qualified community development entity and  
312 all transferees under paragraph (6) of subsection (f) of this Code section having  
313 invested 85 percent of the purchase price of qualified equity investments issued by the  
314 qualified community development entity and such transferees by the second credit  
315 allowance date in compliance with subsection (p) of this Code section. The state  
316 treasurer shall have 30 days to comply with such request or give notice of  
317 noncompliance.

318 (k)(1) The department shall issue letter rulings regarding the tax credit program  
319 authorized under this Code section, subject to the terms and conditions set forth in this  
320 Code section.

321 (2) The department shall respond to a request for a letter ruling within 60 days of receipt  
322 of such request. The applicant may provide a draft letter ruling for the department's  
323 consideration. The applicant may withdraw the request for a letter ruling, in writing,  
324 prior to the issuance of the letter ruling. The department may refuse to issue a letter  
325 ruling for good cause but must list the specific reasons for refusing to issue the letter  
326 ruling. Good cause includes, but is not limited to:

327 (A) The applicant requests the department to determine whether a statute is  
328 constitutional or a regulation is lawful;

329 (B) The request involves a hypothetical situation or alternative plans;

330 (C) The facts or issues presented in the request are unclear, overbroad, insufficient, or  
331 otherwise inappropriate as a basis upon which to issue a letter ruling; and

332 (D) The issue is currently being considered in a rule-making procedure, contested case,  
333 or other agency or judicial proceeding that may resolve the issue.

334 (3) Letter rulings shall bind the department and the department's agents and their  
335 successors until such time as the entity or its shareholders, members, or partners, as  
336 applicable, claim all of such credits on a Georgia tax return or report, subject to the terms  
337 and conditions set forth in properly published regulations. The letter ruling shall apply  
338 only to the applicant.

339 (4) In rendering letter rulings and making other determinations under this Code section,  
340 to the extent applicable, the department, the Department of Revenue, and the  
341 Commissioner shall look for guidance to Section 45D of the Internal Revenue Code  
342 of 1986, as amended, and the rules and regulations issued thereunder.

343 (l)(1) An entity claiming a credit under this Code section is not required to pay any  
344 additional retaliatory tax levied under Code Section 33-3-26 as a result of claiming that  
345 credit.

346 (2) In addition to the exclusion in paragraph (1) of this subsection, an entity claiming a  
347 credit under this Code section shall not be required to pay any additional tax that may  
348 arise as a result of claiming that credit.

349 (m)(1) Once certified under paragraph (4) of subsection (f) of this Code section, a  
350 qualified equity investment shall not be decertified unless all of the requirements of  
351 paragraph (2) of this subsection have been met. Until all qualified equity investments  
352 issued by a qualified community development entity are decertified under this subsection,  
353 the qualified community development entity shall not be entitled to distribute to its equity  
354 holders or make cash payments on long-term debt securities that have been designated  
355 as qualified equity investments in an amount that exceeds the sum of: (i) the cumulative  
356 operating income, as defined by regulations adopted under Section 45D of the Internal  
357 Revenue Code of 1986, as amended, earned by the qualified community development

358 entity since issuance of the qualified equity investment, prior to giving effect to any  
359 expense from the payment of interest on long-term debt securities designated as qualified  
360 equity investments, and (ii) 50 percent of the purchase price of the qualified equity  
361 investments issued by the qualified community development entity.

362 (2) To be decertified, a qualified equity investment shall:

363 (A) Be beyond its seventh credit allowance date;

364 (B) Have been in compliance with subsection (h) of this Code section up through its  
365 seventh credit allowance date, including any cures under subsection (i) of this Code  
366 section; and

367 (C) Have had its proceeds invested in qualified low-income community investments  
368 such that the total qualified low-income community investments made, cumulatively  
369 including reinvestments, exceeds 150 percent of its qualified equity investment.

370 (3) A community development entity that seeks to have a qualified equity investment  
371 decertified under this subsection shall send notice to the department of its request for  
372 decertification along with evidence supporting the request. The provisions of  
373 subparagraph (B) of paragraph (2) of this subsection shall be deemed to be met if no  
374 recapture action has been commenced by the department as of the seventh credit  
375 allowance date. Such request shall not be unreasonably denied and shall be responded  
376 to within 30 days of receiving the request. If the request is denied for any reason, the  
377 burden of proof shall be on the department in any administrative or legal proceeding that  
378 follows.

379 (n) No qualified community development entity shall be entitled to pay to any affiliate of  
380 such qualified community development entity any fees in connection with any activity  
381 under this subsection prior to the decertification under subsection (m) of this Code section  
382 of all qualified equity investments issued by such qualified community development entity  
383 and all transferees under paragraph (6) of subsection (f) of this Code section. The  
384 foregoing shall not prohibit a qualified community development entity from allocating or  
385 distributing income earned by it to such affiliates or from paying reasonable interest on  
386 amounts loaned to the qualified community development entity by such affiliates.

387 (o) A qualified active low-income community business that receives a qualified  
388 low-income community investment from a qualified community development entity that  
389 issues qualified equity investments pursuant to this chapter, or any affiliates of such a  
390 qualified active low-income community business, may not directly or indirectly:

391 (1) Own or have the right to acquire an ownership interest in a qualified community  
392 development entity or member or affiliate of a qualified community development entity,  
393 including, but not limited to, a holder of a qualified equity investment issued by the  
394 qualified community development entity; or

395 (2) Lend to or invest in a qualified community development entity or member or affiliate  
 396 of a qualified community development entity, including, but not limited to, a holder of  
 397 a qualified equity investment issued by a qualified community development entity where  
 398 the proceeds of the loan or investment are directly or indirectly used to fund or refinance  
 399 the purchase of a qualified equity investment hereunder.

400 For purposes of this subsection, a qualified community development entity is not  
 401 considered an affiliate of a qualified active low-income community business solely as a  
 402 result of its qualified low-income community investment in the business.

403 (p) For purposes of satisfying subparagraph (h)(1)(C) of this Code section, a qualified  
 404 community development entity, together with all transferees under paragraph (6) of  
 405 subsection (f) of this Code section, shall:

406 (1) Invest an amount equal to at least 25 percent of the purchase price of all qualified  
 407 equity investments issued by the qualified community development entity and such  
 408 transferees in qualified active low-income community businesses located in  
 409 nonmetropolitan counties in this state as identified by the Community Development  
 410 Financial Institutions Fund in connection with Section 45D of the Internal Revenue Code  
 411 of 1986, as amended; and

412 (2) Maintain such level of investment set forth in paragraph (1) of this subsection in  
 413 accordance with subparagraph (h)(1)(C) of this Code section.

414 (q)(1) Qualified community development entities issuing qualified equity investments  
 415 shall submit a report to the department within the first five business days after the first  
 416 anniversary of the initial credit allowance date that provides documentation as to the  
 417 investment of 85 percent of the purchase price in qualified low-income community  
 418 investments in qualified active low-income community businesses located in this state.

419 The report shall include:

420 (A) A bank statement of the qualified community development entity evidencing each  
 421 qualified low-income community investment;

422 (B) Evidence that the business was a qualified active low-income community business  
 423 at the time of the qualified low-income community investment; and

424 (C) Evidence of the qualified community development entity's compliance with  
 425 subsection (h) of this Code section.

426 (2) After submitting the annual report required pursuant to subparagraph (A) of  
 427 paragraph (1) of this subsection, the qualified community development entity shall submit  
 428 an annual report to the department within 60 days of the beginning of the calendar year  
 429 during the compliance period. An annual report is not due before the first anniversary of  
 430 the initial credit allowance date and is not due with respect to a qualified active  
 431 low-income community business that has redeemed or repaid all outstanding qualified

432 low-income community investments. The department shall publish the report on the  
 433 department's website in a publicly available format. The report published on the website  
 434 shall not include any proprietary or confidential information. The report shall include,  
 435 but not be limited to, the following:

436 (A) With respect to each qualified active low-income community business:

437 (i) Its name and address;

438 (ii) The amount of qualified low-income community investments received; and

439 (iii) The cumulative amount of qualified low-income community investments,  
 440 exclusive of qualified low-income community investments made with repaid or  
 441 redeemed qualified low-income community investments or interest profits realized  
 442 thereon; and

443 (B) Average annual salary of positions described in subparagraph (A) of this  
 444 paragraph."

445 **SECTION 2.**

446 Chapter 10 of Title 10 of the Official Code of Georgia Annotated, relating to seed-capital  
 447 fund, is amended by adding a new Code section to read as follows:

448 "10-10-21.

449 (a) This Code section shall be known and may be cited as the 'Invest Georgia Tax Credit.'

450 (b) As used in this Code section, the term:

451 (1) 'Allocation amount' means the total amount of tax credits purchased by a qualified  
 452 taxpayer.

453 (2) 'Applicable percentage' means 0 percent for the first two credit allowance dates and  
 454 20 percent for the next five credit allowance dates.

455 (3) 'Board' means the Invest Georgia Board created under Code Section 10-10-12.

456 (4) 'Contributed capital' shall have the same meaning as provided in Code Section  
 457 10-10-11; provided, however, that all contributed capital obtained by the fund pursuant  
 458 to this Code section shall be considered a private contribution authorized pursuant to  
 459 Code Section 10-10-15 and shall be paid to the fund for tax credits allocated pursuant to  
 460 this Code section.

461 (5) 'Credit allowance date' means the date on which a qualified taxpayer purchases tax  
 462 credits authorized under this Code section and each of the six anniversary dates of such  
 463 date thereafter.

464 (6) 'Fund' means the Invest Georgia Fund created under Code Section 10-10-10.

465 (7) 'Program' means the Invest Georgia Tax Credit Program.

466 (8) 'Qualified taxpayer' means any of the following that has insurance premiums tax  
 467 liability and contributes capital to purchase premiums tax credits under this Code section:

- 468 (A) An insurance company authorized to do business in this state; and  
469 (B) A holding company that has at least one insurance company subsidiary authorized  
470 to do business in this state.
- 471 (9) 'State premium tax liability' means any liability incurred by any entity under Code  
472 Sections 33-3-26 and 33-8-4, or, if the tax liability under Code Sections 33-3-26 and  
473 33-8-4 is eliminated or reduced, the term shall also mean any tax liability imposed on an  
474 insurance company or other person that had premium tax liability under the laws of this  
475 state.
- 476 (10) 'Tax credit' means a credit against an entity's state premium tax liability offered to  
477 or held by a qualified taxpayer under this Code section.
- 478 (c) The fund is hereby allocated and authorized to sell up to \$55,000,000.00 of tax credits  
479 to qualified taxpayers.
- 480 (d) The board is authorized to sell the tax credits authorized under this Code section or  
481 contract with an independent third party to conduct such sale, including without limitation  
482 by a bidding process among qualified taxpayers to purchase the tax credits. In raising  
483 capital for the program, the board shall have the discretion to distribute tax credits using  
484 a market-driven approach or any approach it reasonably determines will serve to maximize  
485 the yield to the fund for the program.
- 486 (e) A qualified taxpayer that purchases tax credits from the fund owns a vested right to  
487 credit against the taxpayer's state premium tax liability on a premium tax report filed under  
488 this Code section that may be utilized as follows:
- 489 (1) On each credit allowance date of such qualified equity investment, the taxpayer, or  
490 subsequent holder of the tax credit, shall be entitled to utilize a portion of such credit  
491 during the taxable year, including such credit allowance date;
- 492 (2) The credit amount shall be equal to the applicable percentage for such credit  
493 allowance date multiplied by the amount of tax credits purchased; and
- 494 (3) The amount of the credit claimed by a taxpayer shall not exceed the amount of such  
495 taxpayer's state premium tax liability for the tax year for which the credit is claimed. Any  
496 amount of tax credit that the taxpayer is prohibited from claiming in a taxable year as a  
497 result of this Code section may be carried forward for use in any subsequent taxable year,  
498 provided that the credit may not be carried over to any taxable year that begins after  
499 December 31, 2028.
- 500 (f) No tax credit claimed under this Code section shall be refundable, and a qualified  
501 taxpayer may not carry back a tax credit.
- 502 (g) Tax credits obtained under this Code section may be transferred or sold without  
503 restriction to any entity that is a qualified taxpayer and that agrees to assume all of the  
504 transferor's obligations with respect to the initial purchase of the tax credit, provided that

505 written notice is provided to the fund at least 30 days prior to completing the transfer or  
506 sale.

507 (h) Tax credits obtained by or allocated to a partnership, limited liability company, or  
508 S-corporation may be allocated to the partners, members, or shareholders of such entity for  
509 their direct use in accordance with the provisions of any agreement among such partners,  
510 members, or shareholders.

511 (i) The board shall maintain records of the owners of tax credits purchased from the fund  
512 or subsequently transferred or sold and shall require all qualified taxpayers to transmit  
513 information about the holders of the tax credits that may be required by the Commissioner  
514 of Insurance or Department of Revenue as a condition of purchase, transfer, or sale.

515 (j) Contributed capital committed by a qualified taxpayer for the purchase of a tax credit  
516 shall be paid to the fund. A qualified taxpayer that commits contributed capital to the fund  
517 shall certify to the board that the qualified taxpayer has no interest in the fund or  
518 expectation of return, equity interest, or any other residual value for its contribution beyond  
519 that of the tax credits received. Nothing under this Code section shall prohibit the board  
520 from establishing an installment payment schedule for payments of contributed capital to  
521 be made by the qualified taxpayer.

522 (k) The use by a qualified taxpayer of a tax credit purchased from the fund or from another  
523 qualified taxpayer that initially purchased a tax credit from the fund constitutes a form of  
524 payment of tax and not a credit earned for any other act by the qualified taxpayer.

525 (l) An entity claiming a credit under this Code section is not required to pay any additional  
526 retaliatory tax levied under Code Section 33-3-26 as a result of claiming that credit.

527 (m) An entity claiming a credit under this Code section shall not be required to pay any  
528 additional tax that may arise as a result of claiming that credit.

529 (n) The Commissioner of Insurance shall permit qualified taxpayers to report the present  
530 value of tax credits purchased as an admissible asset for statutory reporting purposes.

531 (o) On receipt of payment or payments of capital, the board shall notify the Commissioner  
532 of Insurance and the Department of Revenue of the amounts of fully vested tax credits that  
533 each qualified taxpayer has purchased.

534 (p) The fund shall not execute the sale of tax credits for cumulative cash payments of less  
535 than 75 percent of the amount of tax credits sold to each qualified taxpayer.

536 (q) The fund may use contributed capital paid by a qualified taxpayer for any purpose  
537 authorized under Article 2 of this chapter.

538 (r) The board shall be authorized to promulgate any rules and regulations necessary to  
539 implement and administer this Code section."

540

**SECTION 3.**

541

This Act shall become effective on July 1, 2015, and shall be applicable to all taxable years

542

beginning on or after January 1, 2016.

543

**SECTION 4.**

544

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