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LABOR AND INDUSTRIAL RELATIONS

Employment Security: Amend Chapter 8 of Title 34 of the Official Code of Georgia Annotated, Relating to State-wide Reserve Ratio, so as to Provide that, for a Period of Time, Employers who Hire Persons Receiving Employment Security Benefits Shall be Entitled to a Credit Against Employer Contributions; Amend Chapter 7 of Title 48 Relating to Taxation of Corporations so as to Provide that, a Portion of the Net Long-Term Capital Gains Shall be Excluded from State Taxable Income of Corporations and Individuals; Provide for an Income Tax Credit for Certain Qualified Business Investments for a Limited Period of Time; Provide for Legislative Findings and Intent; Provide for Definitions; Provide for Procedures, Conditions, and Limitations; Provide for Powers, Duties, and Authority of the State Revenue Commissioner with Respect to the Foregoing; Eliminate the Corporate Net Worth Tax; Provide for the Effect of Such Elimination of Liabilities and Eligibilities; Provide that Such Elimination Shall not Abate or Affect Prosecutions, Punishments, Penalties, Administrative Proceedings or Remedies, or Civil Actions Related to Certain Violations; Provide for Other Related Matters; Provide for Effective Dates; Provide for Applicability; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS:	O.C.G.A. §§ 34-8-156 (amended); 48-7-21, -27 (amended); 48-7-40.29 (new); 48-13-70 (amended)
BILL NUMBER:	HB 1023
ACT NUMBER:	N/A
GEORGIA LAWS:	N/A
SUMMARY:	The primary goal of this bill was to provide tax relief and create jobs while also encouraging investors to support local business development. The bill sought to accomplish this goal by giving employers a credit against contributions if they hired persons who were receiving unemployment benefits

and by providing income tax credits to investors.

EFFECTIVE DATE: N/A[1]

History

More than 700,000 Georgians are currently unemployed as a result of the current economic crisis.[2] Legislators have been searching actively for a legislative solution to the unemployment problem.[3] For example, during the 2009 session, the Georgia House of Representatives introduced House Bill (HB) 481, known then as the Jobs, Opportunity, and Business Success Act of 2009.[4]

HB 481 was similar to this session's HB 1023 in that it aimed to create jobs and phase out a number of taxes on businesses. Specifically, HB 481 had six major provisions. First, it would have created a quarterly tax credit towards the unemployment insurance tax for each eligible employee hired.[5] "Eligible employee" meant employees receiving state unemployment benefits.[6] Second, it would have created a $2,400 income tax credit for each eligible employee hired. In that provision, "eligible employee" meant those who had been unemployed for at least four weeks prior to their current employment and remained employed for at least twenty-four weeks.[7] Third, it would have started a "New Business Tax Holiday."[8] That provision would waive the $100 filing fee for one year for new businesses, thus creating a one-year "holiday" on new filings for LLC's, Limited Partnerships, and For Profit Companies.[9] Fourth, it would have phased out the Sales Tax Deposit.[10] Fifth, it would have

1. If enacted, the bill's effective date would have been January 1, 2012.
2. Telephone Interview with Rep. Matt Ramsey (R-72nd) (Apr. 5, 2010) [hereinafter Ramsey Interview].
3. *See* Mary Jo Pitzl, *Senate Committee Advances "Jobs Bill,"* ARIZONA REPUBLIC, Apr. 10, 2010, *available at*, http://www.azcentral.com/community/glendale/articles/2010/04/12/20100412tax-cuts-jobs-bill-arizona.html (last visited July 8, 2010).
4. HB 481, as introduced, 2009 Ga. Gen. Assem.
5. Posting of Joshua Culling to Government Bytes, The Official Blog of the National Taxpayers Union, http://blog.ntu.org/main/post.php?post_id=4502 (Apr. 6, 2009).
6. *Id*.
7. *Id*.
8. *Id*.
9. *Id*.
10. *Id*.

abolished the Net Worth Tax.[11] Sixth, it would have cut the Capital Gains Tax in half.[12]

HB 481 overwhelmingly passed in the General Assembly.[13] However, certain Republican leaders added a provision "slashing the capital gains tax on long-term investments" just before the bill went to Governor Perdue for his signature.[14] This last-minute addition would have made the bill highly expensive for Georgia, a state which was already short of money, and Governor Perdue was concerned about the addition.[15] The Governor believed that the legislation could not "be afforded at [that] time."[16] He was also concerned that HB 481 did not sufficiently limit the number of previously unemployed employees for which an employer could claim a credit.[17] For those reasons, Governor Perdue vetoed HB 481 in 2009.

Determined to try again, Georgia legislators introduced HB 1023, the JOBS Act of 2010, with the same hope of spurring job creation. HB 1023 included many provisions that were substantially similar to the JOBS Act of 2009. HB 1023 provided incentives for hiring people from the unemployment lists and investing in local businesses.[18] For example, the bill provided a credit for employers who hired people from unemployment lists.[19] Additionally, the bill encouraged investment in small business by providing tax credits to investors.[20] However, Georgia's financial condition had worsened since the 2009 session, forcing Representative Tom Graves (R-12th) and the other sponsors to remove some of the more costly provisions

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11. Culling, *supra* note 5.
12. *Id*.
13. James Salzer, *JOBS Act Falls Short*, ATLANTA J-CONST., Apr. 14, 2010, at A1.
14. *Id*.
15. *Id*.
16. Perry Goodfriend, *Business Tax Break Bill Prompts Perdue Veto*, ATLANTA PUBLIC POLICY EXAMINER, May 12, 2009, http://image.examiner.com/x-1163-Atlanta-Public-Policy-Examiner~y2009m5d12-Business-tax-break-bill-prompts-Perude-veto.
17. *See* Interview with Rep. Melvin Everson (R-106th) (Apr. 1, 2010) [hereinafter Everson Interview].
18. *See* Arnall Golden Gregory LLP, *Client Alert: Georgia Legislative Update*, Apr. 23, 2010, http://www.agg.com/media/interior/ publications/AGG_Client_Alert-Paul-Georgia_Legislative_Update-042110.pdf (explaining that HB 1023 includes the following: "angel investor" tax credit, unemployment insurance tax credits, elimination of the net worth tax, and a triggered 50% reduction of the capital gains tax for all Georgia taxpayers).
19. *Id.*
20. *Id.*

in the 2009 version.[21] Tom Graves and other Republican leaders also met with the Governor at the very beginning of the 2010 legislative session to iron out some of his concerns before introducing HB 1023.[22]

Bill Tracking of HB 1023

Consideration and Passage by the House

Representatives Tom Graves (R-12th), Melvin Everson (R-106th), John Lunsford (R-110th), Matt Ramsey (R-72nd), Martin Scott (R-2nd), and Jay Neal (R-1st), respectively, sponsored HB 1023.[23] The House of Representatives read the bill for the first time on February 1, 2010, and for a second time the following day.[24] Speaker of the House David Ralston (R-7th) assigned the bill to the Special Committee on Small Business Development and Job Creation.[25] The Small Business Committee reviewed the bill and favorably reported it to the floor on February 18.[26]

The bill, as introduced, contained filing-fee exemptions.[27] It also provided for a 25% recapture of credits given to investors.[28] Both of these original provisions were included to incentivize the growth of small businesses.[29] Similarly, Representative Ramsey noted that HB 1023 is "kind of a comprehensive approach to providing incentives to small businesses."[30]

The Small Business Committee offered an amendment to HB 1023. The substitute also provided for filing-fee exemptions but limited the number of exemptions and the available filing methods.[31]

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21. Salzer, *supra* note 13.
22. Everson Interview, *supra* note 17.
23. HB 1023, as introduced, 2010 Ga. Gen. Assem.
24. State of Georgia Final Composite Status Sheet, HB 1023, Apr. 29, 2010.
25. *Id.*
26. *Id.*
27. HB 1023, as introduced, § 2, p. 2, ln. 50–53, 2010 Ga. Gen. Assem.
28. *Id.*
29. *See* Ramsey Interview, *supra* note 2.
30. *Id*.
31. *Compare* HB 1023, as introduced, § 2, p. 2, ln. 50–53, 2010 Ga. Gen. Assem. (lacking any express mention that the exemption is only available for electronic filings), *with* HB 1023 (HCS), § 2, p. 2, ln. 31–52, 2010 Ga. Gen. Assem. (demonstrating the change from the first version to the House

Moreover, the substitute included additional qualifications for qualifying employees under the bill.[32] Next, the substitute increased the recapture of credits given to investors from 25% to 50%.[33] These restrictions could be seen as a compromise between supporters and critics like Representative Brian Thomas (D-100th), who believe that providing tax breaks to employers has nothing to do with creating jobs.[34] Lastly, the substitute required that the revenue shortfall reserve be funded at the level of $500 million or more before a reduction in the capital gains tax would occur.[35]

The third version of the floor substitute eliminated the filing-fee exemptions contained in the previous versions.[36] The unsuccessful JOBS Act of 2009 (HB 481) also included filing-fee exemptions, known as the "New Business Tax Holiday."[37]

Additionally, though the first two versions included portions relating to Title 14 of the Official Code of Georgia, the floor substitute entirely removed all references to Title 14.[38] Similarly, the floor substitute removed the section relating to Code section 48-7-29.18, which defined "qualifying employees."[39] However, the floor substitute added provisions that further defined qualifying entities and investments.[40] The floor substitute defined a "qualified business" as one that employs less than twenty employees, to clarify that large employers were not covered.[41] Representative Ramsey emphasized that an overwhelming majority of new jobs are created by the private sector and, more specifically, private sector businesses with less than

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Committee Substitute and noting that in order to receive the exemption the Article of Incorporation should be filed electronically).

32. *See* HB 1023 (HCS), § 5, p. 5, ln. 146–64, 2010 Ga. Gen. Assem.

33. *Compare* HB 1023, as introduced, § 9, p. 10, ln. 332–37, 2010 Ga. Gen. Assem. (providing for a 25% recapture of credits), *with* HB 1023 (HCS), § 9, p. 11, ln. 344–49, 2010 Ga. Gen. Assem. (indicating the increase from a 25% recapture of credits in the first version of the bill to a 50% recapture of credits in the House Committee Substitute).

34. Interview with Rep. Brian Thomas (D-100th) (Apr. 1, 2010) [hereinafter Thomas Interview].

35. HB 1023 (HCS), § 6, p. 6, ln. 185–91, 2010 Ga. Gen. Assem.

36. *See generally* HB 1023 (HFS), 2010 Ga. Gen. Assem.

37. Culling, *supra* note 5.

38. *Compare* HB 1023, as introduced, § 4, p. 3, ln. 80–113, 2010 Ga. Gen. Assem. (demonstrating the inclusion of Title 14), *with* HB 1023 (HCS), § 4, p. 3, ln. 78–110, 2010 Ga. Gen. (noting the reference to Title 14) *and* HB 1023 (HFS), 2010 Ga. Gen. Assem. (demonstrating the complete removal of all reference to Title 14 in the Floor Substitute).

39. *Id.*

40. *See* HB 1023 (HFS), § 4, p. 4–5, ln. 140–209, 2010 Ga. Gen. Assem.

41. *Id.* § 4, p. 5, ln. 152–85.

fifty employees.[42] These small businesses were the exact entities the bill aimed to reach.

More significantly, the floor substitute increased the trigger amount for capital gains deductions from taxable income.[43] The committee substitute required that the revenue shortfall reserve be funded at the level of $500 million or more, while the floor substitute required funding at the level of $1 billion or more.[44] Once again, this could have been seen as a compromise with critics who believed that capital gains tax cuts had nothing to do with creating jobs.[45]

House Bill 1023 was read for the third time on Crossover Day, March 26, 2010.[46] On that same day, the floor discussed and passed the bill 154 to 8.[47]

Consideration and Passage by the Senate

On March 30, 2010, the Senate first read HB 1023. Senator Chip Rogers (R-21st) handled the bill on the floor.[48] Senate President Pro Tempore Tommie Williams (R-19th) assigned the bill to the Senate Finance Committee.[49] The Finance Committee offered a substitute and favorably reported the bill with their substitute that same day.[50] The next day, the Senate read the bill for the second time.[51]

The Senate Finance Committee's substitute included provisions relating to the "care and protection of indigent and elderly patients" under Title 31.[52] This was included because, in addition to creating jobs and supporting local businesses, some lawmakers in the committee decided that this bill presented the opportunity to "provide temporary revenue support for hospitals and non-profit health care

42. Ramsey Interview, *supra* note 2.

43. *Compare* HB 1023 (HCS), § 6, p. 6 ln. 185–91, 2010 Ga. Gen. Assem. (demonstrating a $500 million trigger amount for the availability of capital gains deductions), *with* HB 1023 (HFS), § 3, p. 4, ln. 113–18, 2010 Ga. Gen. Assem. (increasing the trigger amount for capital gains deductions from $500 million to $1 billion).

44. *Id*.

45. *See* Thomas Interview, *supra* note 34.

46. State of Georgia Final Composite Status Sheet, HB 1023, Apr. 29, 2010.

47. Georgia House of Representatives Voting Record, HB 1023 (Mar. 26, 2010).

48. State of Georgia Final Composite Status Sheet, HB 1023, Apr. 29, 2010.

49. *Id.*

50. *Id.*

51. *Id.*

52. *See* HB 1023 (SCS), § 2, p. 2–5, ln. 42–144, 2010 Ga. Gen. Assem.

clinics."[53] However, this was the only time that Title 31 appeared in any version of the bill, and it garnered little to no attention in the press or among legislators.

Also notable was the reoccurring issue of what dollar amount triggered the capital gains deduction. The committee substitute once again lowered the necessary amount from $1 billion to $500 million.[54] The reduced trigger-amount allowed for capital gains deductions to be made at a much earlier time.

The Senate did not adopt the committee substitute, and the final version removed all reference to Title 31 and any mention of healthcare because the goal of the bill was to decrease the number of people on Georgia's unemployment roster and spur business development.[55] In addition, the first mention of the bill as the "Jobs, Opportunity, and Business Success Act of 2010" appeared in the final version.[56]

The Senate read the bill for the third time and passed it on April 1 by a vote of 33 to 13.[57] The House of Representatives agreed to the version the Senate passed and no Conference Committee was appointed. However, Govern Perdue vetoed the bill on June 4.[58]

The Bill

Section 1: The Georgia Works Tax Credit

Though the bill did not pass, section 1 of the bill would have introduced the Georgia Works Tax Credit.[59] The bill would have

53. *Id.* § 1, p. 2, ln. 37–40.

54. *Compare* HB 1023 (HFS), § 4, p. 7 ln. 219–25, 2010 Ga. Gen. Assem. (increasing the trigger amount for capital gains deductions to $1 billion), *with* HB 1023 (SCS), § 3, p. 4, ln. 113–18, 2010 Ga. Gen. Assem. (demonstrating that the Senate Finance Committee decreased the trigger amount for capital gains deductions from $1 billion to $500 million).

55. HB 1023 (SFS), 2010 Ga. Gen. Assem; Stanley S. Jones et al., *Gold Dome Report*, Apr. 1, 2010, http://nelsonmullins.com/newsletters/gold-dome-report-for-april-1-2010 ("When HB 1023 came off the floor it had stripped out the language that had come from the Senate Finance Committee, which added on the language of HB 307 (The Hospital Provider Fee Bill).").

56. HB 1023 (SFS), 2010 Ga. Gen. Assem.

57. State of Georgia Final Composite Status Sheet, HB 1023, Apr. 29, 2010; Georgia Senate Voting Record, HB 1023 (Apr. 1, 2010).

58. State of Georgia Final Composite Status Sheet, HB 1023, Apr. 29, 2010. For a discussion of Governor Perdue's veto, see *infra* text accompanying notes 146–150.

59. HB 1023, as passed, § 1, p. 1–3, ln. 20–88, 2010 Ga. Gen. Assem.

introduced a new tax credit to be granted to certain employers who hired specifically qualified individuals to work as employees.[60] This portion of the bill sought to amend Code section 34-8-156 and add subsections (g)(1)–(3).[61] The amount of the credit would have been between $25.00 and $125.00 per employee depending on certain factors. For example, one factor, the State-wide Reserve Ratio, would have been dependent on how much money Georgia had in reserves. In determining the amount of the credit, the Commissioner would have had to evaluate the conditions of the Georgia labor market, the state of the economy, and the State-wide Reserve Ratio.[62] The credit could have been claimed by an employer up to four times a year.[63] Before an employer could have benefitted from the credit, however, a number of necessary conditions would have had to be fulfilled.[64]

One such condition would have been that the individual employee must have filed a claim for unemployment compensation in the state and must have been receiving weekly unemployment compensation benefits on that claim.[65] Additionally, the individual must have been profiled by the department as "likely to exhaust benefits."[66] It also would have required that the individual have no return-to-work date or promise of future employment and that the individual have at least eight weeks of benefit eligibility remaining on his or her claim.[67] Finally, the individual's employment must have consisted of at least thirty hours per week before an employer could claim the credit.[68]

In order to claim the Georgia Works Tax Credits, employers would have had to claim the credits on the reports required to be filed under proposed Code section 34-8-156 "as a reduction from amounts otherwise due in each of the four calendar quarters immediately following the hire date of the individual."[69] However, the bill would have included a caveat stating that the credit would not be available

60. *Id.* § 1, p. 2, ln. 54–62.
61. *Id.* § 1, p. 1–3, ln. 20–88.
62. *Id.* § 1, p. 2–3, ln. 44–88.
63. *Id.*
64. *Id.* § 1, p. 2, ln. 54–62, 2010 Ga. Gen. Assem.
65. HB 1023, as passed, § 1, p. 2, ln. 54–62, 2010 Ga. Gen. Assem.
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.* § 1, p. 3, ln. 63–68, 2010 Ga. Gen. Assem.

for any individual who had been hired more than once by the employer claiming the credit.[70]

The bill would have imposed strict guidelines on how an employer could have claimed credits. For example, the credit would have had to have been timely claimed for the calendar quarter to which the credit is applicable and "in no event later than the last day of the reporting month following the end of the calendar quarter to which the credit is applicable."[71] The bill would have also mandated that the credit should not be refundable.[72] The bill stated that the credit could not have reduced tax liability below zero, and any unused credit remaining at the end of a calendar year would have been deemed expired and would not have been carried forward to another calendar year.[73] Finally, the credits would have been cancelled if an employer had failed to timely file a report claiming the credit.[74]

Section 2: Capital Gains Taxes and the Corporation

In section 2, the bill would have added a new paragraph to the end of Code section 48-7-21(b) that aimed to provide tax breaks on profits that corporations received from investing in other companies.[75] The addition would have further set the parameters for when a corporation would have been able to receive a reduction in capital gains taxes.[76] Most importantly, the debate over the requisite amount in the revenue shortfall reserve would have been settled, and the eventual 50% reduction of the capital gains tax would have only occurred "at a time in which a half of a billion dollars is in the reserve fund."[77] Instead of $500 million, the triggering amount would have been settled at $1 billion.[78] On or after January 1 of the year immediately following the year where the revenue shortfall reserve is

70. *Id.*
71. HB 1023, as passed, § 1, p. 3, ln. 73–80, 2010 Ga. Gen. Assem.
72. *Id.*
73. *Id.*
74. *Id.* § 1, p. 3, ln. 81–88.
75. *Id.* § 2, p. 3–4, ln. 90–107.
76. *Id.*
77. Video Recording of Senate Floor Discussion, Apr. 1, 2010 at 19 min., 30 sec. (remarks by Sen. Chip Rogers (R-21st)), http://mediam1.gpb.org/ga/leg/2010/ga-leg-senate_040110_PM1.wmv [hereinafter Senate Floor Video].
78. HB 1023, as passed, § 2, p. 3–4, ln. 90–107, 2010 Ga. Gen. Assem.

funded at $1 billion, there would have been a 25% deduction of excess net long-term capital gains.[79] In the following years, the deduction would have increased to 50%.[80]

Section 3: Capital Gains Taxes and the Individual

In section 3, the bill similarly would have provided tax breaks for investments by amending Code section 48-7-27 subsection (a).[81] This Code section was previously amended in 1992 by HB 456 in order to make Georgia's taxation of capital gains match the federal system.[82] The proposed amendment would have mirrored the provision for corporations, yet it would have provided tax breaks for individuals.[83] An individual would have received a 25% deduction of excess net long-term capital gains on or after January 1 of the year following the year where the revenue shortfall reserve is funded at $1 billion or more.[84] This deduction would have increased to 50% in the following years.[85]

Section 4: Angel Investor Tax Credit

In section 4, the bill would have further amended Title 48 by adding a new Code section 48-7-40.29. Section 48-7-40.29(a) stated the intent of the proposed Code section in terms of four primary goals: to encourage individual investors to invest in wealth-creating businesses; to enlarge the number of jobs within the state; to expand Georgia's economy; and to support businesses seeking to commercialize technology invented in Georgia's universities and colleges.[86] This new section would have been known as the "Angel

79. *Id.*
80. *Id.*
81. *Id.* § 3, p. 4 ln. 108–125, 2010 Ga. Gen. Assem.
82. Trent B. Speckhals, *Income Taxes: Adjust the Treatment of Capital Gains, Job Tax Credits, and Gain or Loss from the Sale of Property*, 9 GA. ST. U. L. REV. 338, 339 (1992) ("The Act allows Georgia taxpayers to adjust their taxable net income for capital gains, the same way they do for federal adjusted gross income.").
83. HB 1023, as passed, § 3, p. 4, ln. 108–25, 2010 Ga. Gen. Assem.
84. *Id.*
85. *Id.*
86. *Id.* § 4, p. 4–5, ln. 127-39.

Investor Tax Credit."[87] Typically, "angel investors" would have been considered to be high net-worth individuals who invest in the early stages of young companies with their own personal capital.[88]

Proposed section 48-7-40.29(b) would have provided ten relevant definitions.[89] For example, a business would have had to meet certain standards before any tax break was applicable to potential angel investors. Code section 48-7-40.29(b)(6) would have defined a "qualified business" as follows:

> a registered business that: (A) [i]s either a corporation, limited liability company, or general or limited partnership located in this state; (B) [w]as organized no more than three years before the qualified investment was made; (C) [h]as its headquarters located in this state at the time the investment was made . . . .[90]

The above listed requirements sought to ensure that the business receiving the benefit of the tax credit would have been a Georgia business that would have helped stimulate Georgia's economy, as opposed to another state's economy.

The definition would have included a number of additional requirements. For example, the business would have been qualified if it employed twenty or fewer people.[91] Also, the business must have had a gross annual revenue of $500,000 or less.[92] Another condition would have required that the business had not obtained more than $1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments during its existence, not including commercial loans from chartered banking or savings and loan institutions.[93] The business would have had to have been primarily engaged in manufacturing, processing, online and digital warehousing, online and digital wholesaling, software development,

87. Posting of Jacob Dearolph to The Entrepreneur School Blog, http://blog.theentrepreneurschool.com/angel-investor-tax-credit-georgia-faculty-chris-hanks-testifies-to-georgia-legislature-1417 (Mar. 24, 2010).
88. *Id.*
89. HB 1023, as passed, § 4, p. 5–7, ln. 140–209, 2010 Ga. Gen Assem.
90. *Id.* § 4, p. 5, ln. 152–59.
91. *Id.* § 4, p. 5, ln. 159–60.
92. *Id.* § 4, p. 5, ln. 161–63.
93. *Id.* § 4, p. 5, ln. 164–66.

or information technology services.[94] Finally, the business could not have been engaged substantially in such activities as retail sales, real estate, construction, gambling, financial activities, entertainment, amusement, or recreation activities.[95] A business would have been considered to have been "engaged substantially" in a particular activity "if its gross revenue from such activity had exceed[ed] 25 percent of its gross revenues in any fiscal year or it [was] established pursuant to its articles of incorporation, articles of organization, operating agreement or similar organizational documents to engage as one of its primary purposes such activity."[96]

The additional requirements listed in the definition section were meant to narrow the legislation to only encompass small businesses.[97]

In order to receive the tax breaks, an angel investor's investment would have had to meet certain standards. The term "qualified investment" was defined as "an investment by a qualified investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of qualified subordinate debt in a qualified business."[98] However, the funds for the investment must not have been raised as a result of other tax incentive programs.[99]

In order to satisfy the term "qualified investor," the investor would have had to meet certain criteria. For example, if the investor was an individual person, as opposed to a business entity, then that individual would have had to have been either a resident of the state of Georgia or a nonresident who was obligated to pay taxes.[100] If the investor was a business entity, it would also have had to satisfy specific criteria. It would have had to have been a pass-through entity, formed for investment purposes.[101] Additionally, it could not have had any business operations.[102] Finally, the entity would have had to have committed capital under management of equal to or less

94. *Id.* § 4, p. 5–6, ln. 168–71.
95. HB 1023, as passed, § 4, p. 6, ln. 172–80, 2010 Ga. Gen Assem.
96. *Id.* § 4, p. 6, ln. 181–95.
97. Ramsey Interview, *supra* note 2 (noting that HB 1023 was "purely an effort to help small businesses").
98. HB 1023, as passed, § 4, p. 6, ln. 186–93, 2010 Ga. Gen. Assem.
99. *Id.*
100. *Id.* § 4, p. 6, ln. 196–97.
101. *Id.* § 4, p. 6, ln. 198.
102. *Id.* § 4, p. 6, ln. 198–99.

than $5 million, and it could not have been capitalized with funds raised or pooled through private placement memoranda directed to institutional investors.[103] If an investor met each qualification listed above, he, she, or it would have been considered an "angel investor."

After providing for definitions, the bill would have gone on to impose specific conditions and limitations on the Angel Investor Tax Credits. For example, the bill would have mandated that the aggregate amount of credit allowed an individual must not exceed $30,000.[104] Additionally, the amount of the tax credit would not have been allowed to exceed the claiming individual's net income tax liability.[105] Another condition would have set forth timely filing requirements.[106]

The bill would have also described certain situations in which any tax credit could have been recaptured.[107] For example, the credit could have been recaptured if "within two years after the qualified investment was made, the qualified investor transferr[ed] any of the securities or subordinated debt received in the qualified investment to another person or entity."[108] The credit could have also been recaptured if "within five years after the qualified investment was made, the qualified business [made] a redemption with respect to the securities received or [paid] any principle of the subordinate debt."[109]

The purpose of each definition, condition, and limitation listed in the Angel Investor Tax Credit section would have been to support wealth-creating businesses and spur Georgia's economy. As stated in the Code section, "[t]he Generally Assembly finds that entrepreneurial businesses significantly contribute to the economy of the state."[110] Therefore, the bill would have simply reiterated the goal of spurring growth of small entrepreneurial businesses.[111]

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103. *Id.* § 4, p. 6, ln. 199–202.
104. HB 1023, as passed, § 4, p. 7, ln. 237–39, 2010 Ga. Gen. Assem.
105. *Id.* § 4, p. 7, ln. 240–41.
106. *Id.* § 4, p. 8, ln. 251–53.
107. *Id.* § 4, p. 8–9, ln. 275–308.
108. *Id.*
109. *Id.*
110. HB 1023, as passed, § 4, p. 4, ln. 129–30, 2010 Ga. Gen. Assem.
111. *See* Ramsey Interview, *supra* note 2 (stating that HB 1023 aimed to reach small business because "we know that ninety-percent of new jobs are created . . . specifically by small businesses").

Section 5: Corporate Net Worth Tax

Section 5 of the bill would have aimed to revise Code Section 48-13-70 in its entirety.[112] The bill would have provided that no corporate net worth taxes could be levied against a corporation under this article.[113] Moreover, no corporate net worth returns would have been required.[114] However, the revision of the article would not have prohibited any punishment for violation of any law prior to January 1, 2010.[115]

Analysis

At the beginning of the legislative process, the bill sponsors met with Governor Perdue and ironed out some of his concerns.[116] For example, Governor Perdue wanted limits on the number of credits employers could receive for hiring unemployed persons.[117] The sponsors took these measures because the Governor vetoed the similar HB 481 last year.[118]

Moreover, a good deal of the debate over the bill concerned the capital gains tax cuts.[119] This explains the constant back-and-forth over the appropriate trigger for when the capital gains cuts would become available.[120] For example, Representative Brian Thomas (D-100th) stated that he opposed the bill because he did not believe the tax cuts had anything to do with creating jobs.[121] He further noted that the bill put people in a difficult position because there were some things people liked, for example the "Angel Investor" credit, and some things they did not like, for example the tax credit for

112. HB 1023, as passed, § 5, p. 11, ln. 340–53, 2010 Ga. Gen. Assem.
113. *Id.*
114. *Id.*
115. *Id.*
116. Everson Interview, *supra* note 17.
117. *Id.*
118. *Id.*; *see also supra* notes 2–22 and accompanying text.
119. *See* HB 1023, as passed, § 2, p. 3–4, ln. 90–107, 2010 Ga. Gen. Assem.
120. *Compare* HB 1023, as passed, § 2, p. 3–4, ln. 90–107, 2010 Ga. Gen. Assem. (requiring a triggering amount of $1 billion or more) *with* HB1023 (SFC), § 4, p. 7, ln. 219–25, 2010, Ga. Gen. Assem. (requiring a triggering amount of $500 million or more).
121. Interview with Rep. Brian Thomas (D-100th) (Apr. 1, 2010).

employers.[122] Lastly, Representative Thomas explained that he doubted the Senate would strip out the capital gains tax cut given the Republican majority.[123] Perhaps reaching some middle ground, the ever-present debate over the appropriate trigger amount for capital gains deductions was settled and required the revenue shortfall reserve to be funded at $1 billion or more.[124]

Capital gains cuts have historically helped to stimulate a sagging economy.[125] However, Georgia ranks fifteenth for having the highest capital gains tax in the country and second in the Southeast.[126] In fact, some of Georgia's neighboring states do not even tax capital gains.[127] Lieutenant Governor Casey Cagle commented on the passage of HB 1023 in the Senate, noting "[t]he legislation we passed today is a true private sector stimulus bill that will . . . cut the capital gains tax in half."[128]

However, some critics did not share Lieutenant Cagle's enthusiasm for the tax cuts. For example, one critic, Allen Essig, believed the final version of the bill—"which has permanent tax cuts of $380 million—could have serious negative implication for Georgia's AAA bond rating."[129] A decline in Georgia's bond rating, which is a measure to indicate the likelihood that the state could meet scheduled interest and principal repayments, could greatly jeopardize the state's ability to borrow money.[130] Moreover, another critic, Sarah Beth Gehl, explained that she thought that the bill was giving corporations "a special tax break during a recession when the state could not afford to pay for our schools, state parks, courts, and child abuse

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122. *Id.*
123. *Id.*
124. HB 1023, as passed, § 2, p. 3–4, ln. 90–107, 2010 Ga. Gen. Assem.
125. Joshua Culling, *ATR Urges Georgia House Leadership to Vote for JOBS*, Mar. 18, 2010, http:www.atr.org/atr-urges-georgia-house-leadership-vote-a4667 ("[C]apital gains tax cuts historically have a positive effect on government revenue, as proven by the federal capital gains tax cuts of 1978, 1981, 1997, and 2003.").
126. Mark S. Woodall, GEORGIA BRANCH, THE ASSOCIATED GENERAL CONTRACTORS' GOVERNMENTAL AFFAIRS DIRECTOR, 2010 LEGISLATIVE SESSION REPORT – WEEK 3 (Feb. 3, 2010).
127. *Id.*
128. Press Release, Lieutenant Governor Casey Cagle, GA Senate Passage of Jobs House Bill 1023 (Apr. 2, 2010), http://www.wtvm.com/global/story.asp?s=12246478.
129. Allen Essig, *Perdue Should Veto HB1055*, ROME NEWS-TRIBUNE, Apr. 15, 2010.
130. *See* InvestorWords, http://www.investorwords.com/533/bond_rating.html (last visited July 7, 2010).

protection workers, among many, many other vital services."[131] Lastly, one critic referred to the JOBS act as a "sham."[132] The critic argued, "[Graves'] legislation contains fine print that would only allow it to take effect if there is a budget surplus in the state of Georgia. But [Graves] knows full well that . . . we have more than a billion dollar deficit, and we are years away from having a budget surplus. . . . It's just another fake gimmick that politicians have used for years to trick voters."[133]

There was also debate over the Georgia Works Tax Credit and whether it would actually create jobs.[134] Critics believed that it simply did not make sense to expect employers to spend a large amount of money paying an employee's salary just because they will get a fraction of that amount in tax credits.[135] Additionally, when considering the Georgia Works Tax Credit that was vetoed in 2009, some critics feared that the tax credit would result in an immediate loss of hard to replace state revenue.[136] On the other hand, Georgia's unemployment rate is nearly 700,000, and advocates of the bill believed that something should be done to incentivize employers to resume hiring.[137] A recent report estimated that the fiscal impact of the Georgia Works Tax Credit through fiscal year 2012 would have been $594,700,000.[138] Additionally, advocates of the bill point out that the Georgia Works Tax Credit would help foster a more business

131. Sarah Beth Gehl, *Sending Tax Money Out of State*, MACON TELEGRAPH, Mar. 4, 2010, *available at* 2010 WLNR 4464405.

132. Press Release, Lee Hawkins (R-49th), Calls for Honest Conservative Solutions to Create Jobs (Mar. 19, 2010), http://www.peachpundit.com/2010/03/19/state-sen-hawkins-calls-graves-jobs-bill-a-sham/.

133. *Id.*

134. Thomas Interview, *supra* note 34.

135. *Id.* ("Nobody is going to hire somebody for $40,000 or $45,000 a year because they can get a $2,500 tax credit.").

136. Dawn Patrick, *State Tax Breaks Designed to Stimulate Business: What New Legislation Means to You*, BUSINESS TO BUSINESS, Sept. 16, 2009, http://www.btobmagazine.com/Articles/2009/May/State_Tax_Breaks_Designed_to_Stimulate_Business.html.

137. Letter from John Stephenson, State Government Affairs Manager, National Taxpayers Union (Mar. 23, 2010), *available at* http://www.ntu.org/in-your-state/georgia/georgia-support-jobs-act-to-spur.html (last visited May 1, 2010).

138. *See* SENATE RESEARCH OFFICE, UPCOMING ISSUES – 2010 LEGISLATIVE SESSION (December 2009), http://senatepress.net/upcoming-issues-2010-legislative-session.html.

friendly environment in Georgia, and "more businesses equal more employment."[139]

The "Angel Investor" Credit

The "Angel Investor" provision of HB 1023 was widely praised by both supporters and critics of the bill. The "Angel Investor" provision provided a tax incentive for investors who invested in young, start-up businesses. "Angel investors" are generally considered to be high net worth individuals who invest in early-stage companies with their personal capital.[140] The provision encouraged such high net worth individuals to invest in young Georgia companies. The provision also included certain stipulations mandating that the company must remain in Georgia. That stipulation was important because "forty percent of Atlanta's high-tech start-up companies leave the state of Georgia within three years."[141] The young companies would then grow and expand in Georgia, thus creating jobs for the state.[142]

The Angel Investor provision had many advocates, including the Georgia Chamber of Commerce, the National Federation of Independent Business, and the Georgia Public Policy Foundation.[143] An additional group, the Georgia Angel Investor Coalition (GAIC), was formed to fund the lobbying efforts associated with the bill.[144] Even Representative Thomas, who strongly opposed the bill in the House, agreed that the Angel Investor provision was a smart piece of legislation, stating that the Angel Investor provision was "very worthwhile." [145]

139. Posting of Rep. Steve Davis, State House: Crossover Day Legislative Update (Mar. 30, 2010) (on file with Georgia State University Law Review), *available at* http://steve-davis.org/blog (last visited May 1, 2010).
140. Dearolph, *supra* note 87.
141. *Id*.
142. *Id*.
143. *Id.*
144. *Id.*
145. *Id.*

Governor Perdue's Veto

Despite the bill's passage in both the House and the Senate, Governor Perdue vetoed the bill.[146] In refusing to sign the bill, Governor Perdue challenged the idea that lowering taxes spurs economic growth.[147] Governor Perdue commented that the bill "contains various changes to tax policy, many of which may have merit but also have substantial impact on future state revenues."[148] The Governor further noted, "[B]ecause of the long-term fiscal implications of HB 1023, I believe the tax policy changes it contains are best considered by the Tax Reform Study Committee, rather than signing them all into law at this time."[149] Similar bills in other states, such as Arizona, stalled in the Senate and did not even make it to the Governor's desk.[150] Unfortunately, the states continue to search for a solution to the enduring economic crisis.

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146. Editorial, *Zero-based Budgeting Veto Disappointing*, ATHENS-BANNER HERALD, June 15, 2010, *available at*, http://www.onlineathens.com/stories/061510/opi_653711162.shtml.

147. *Id.*

148. *Id.*

149. Jim Galloway, *Veto Day for Sonny Perdue: Casualties Include Indoor Ski Resorts, Guns at Airports, Zero-based Budgets*, ATLANTA J-CONST., June 8, 2010, *available at* http://blogs.ajc.com/political-insider-jim-galloway/2010/06/08/veto-day-for-sonny-perdue-casualties-include-indoor-ski-resorts-guns-at-airports-zero-based-budgets/.

150. *See* Arizona Education Association, *Legislative Update* (Apr. 26–30, 2010), *available at* http://www.arizonaea.org/politics.php?page=44 (last accessed July 8, 2010).