

House Bill 439 (AS PASSED HOUSE AND SENATE)

By: Representatives Shaw of the 176<sup>th</sup>, Abrams of the 89<sup>th</sup>, England of the 116<sup>th</sup>, Hatchett of the 150<sup>th</sup>, Knight of the 130<sup>th</sup>, and others

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:

14 style="text-align:center">**SECTION 1.**

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

17 "33-1-24.

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

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

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

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

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

- 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, 48-7-21, and 48-7-27, 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 tax liability for the tax year for which the credit is claimed. Any amount of  
 117 tax credit that the entity is prohibited from claiming in a taxable year as a result of this  
 118 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;  
139 (D) A description of the proposed amount, structure, and purchaser of the qualified  
140 equity investment;  
141 (E) Examples of the types of qualified active low-income businesses in which the  
142 applicant, its controlling entity, or affiliates of its controlling entity have invested under  
143 the federal New Markets Tax Credit Program. Applicants are not required to identify  
144 qualified active low-income community businesses in which they will invest when  
145 submitting an application;  
146 (F) A nonrefundable application fee of \$5,000.00. This fee shall be paid to the  
147 department and shall be required of each application submitted;  
148 (G) The refundable performance fee required by paragraph (1) of subsection (j) of this  
149 Code section.  
150 (H) The amount of qualified equity investment authority the applicant agrees to  
151 designate as a federal qualified equity investment under Section 45D, Internal Revenue  
152 Code, including a copy of the screen from the Community Development Financial  
153 Institutions Funds' Allocation Tracking System of the applicant's remaining federal  
154 qualified equity investment authority or a copy of the Notice of Allocation setting forth  
155 the amount of federal qualified equity investment authority from the Community  
156 Development Financial Institution Fund in the event the allocation agreement  
157 governing such allocation has not been finalized.  
158 (2) A qualified community development entity, on an aggregate basis with all of its  
159 subsidiary qualified community development entities, may not apply to have equity  
160 investments or long-term debt instruments designated as qualified equity investments  
161 under this subsection in excess of the total amount of allocations awarded to such  
162 applicant and its subsidiary qualified community development entities by the Community  
163 Development Financial Institutions Fund under Section 45D of the Internal Revenue  
164 Code of 1986, as amended.  
165 (3) Within 30 days after receipt of a completed application containing the information  
166 set forth in paragraph (1) of this subsection, including the payment of the application fee  
167 and the refundable performance fee, the department shall grant or deny the application  
168 in full or in part. If the department denies any part of the application, it shall inform the  
169 qualified community development entity of the grounds for the denial. If the qualified  
170 community development entity provides any additional information required by the  
171 department or otherwise completes its application within 15 business days of the notice  
172 of denial, the application shall be considered completed as of the original date of  
173 submission. If the qualified community development entity fails to provide the

174 information or complete its application within the 15 business day period, the application  
175 shall remain denied and must be resubmitted in full with a new submission date.

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

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

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

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

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

208 (6) An approved applicant may transfer all or a portion of its certified qualified equity  
209 investment authority to its controlling entity or any subsidiary qualified community  
210 development entity of the controlling entity, provided that the applicant provides the

211 information required in the application with respect to such transferee and the applicant  
 212 notifies the department of such transfer within 30 days of the transfer. The department  
 213 shall acknowledge such transfer if requested by the approved applicant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

417 The report shall include:

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

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

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

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

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

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

435 (i) Its name and address;

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

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

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

443 **SECTION 2.**

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

446 "10-10-21.

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

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

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

451 (2) 'Applicable percentage' means 0 percent for the first two credit allowance dates and  
 452 20 percent for the next five credit allowance dates.

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

454 (4) 'Contributed capital' shall have the same meaning as provided in Code Section  
 455 10-10-11; provided, however, that all contributed capital obtained by the fund pursuant  
 456 to this Code section shall be considered a private contribution authorized pursuant to  
 457 Code Section 10-10-15 and shall be paid to the fund for tax credits allocated pursuant to  
 458 this Code section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

538

**SECTION 3.**

539 This Act shall become effective on July 1, 2015, and shall be applicable to all taxable years  
540 beginning on or after January 1, 2016.

541

**SECTION 4.**

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