

House Bill 735 (AS PASSED HOUSE AND SENATE)

By: Representatives Bentley of the 139<sup>th</sup>, Powell of the 171<sup>st</sup>, Jackson of the 128<sup>th</sup>, Dickey of the 140<sup>th</sup>, Tanner of the 9<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to  
2 general provisions applicable to counties and municipal corporations, so as to exempt certain  
3 railroad property from storm-water fees; to amend Article 2 of Chapter 7 of Title 48 of the  
4 Official Code of Georgia Annotated, relating to the imposition, rate, and computation of and  
5 exemptions from state income taxes, so as to create an income tax credit for expenditures on  
6 the maintenance of railroad track owned or leased by a Class III railroad; to provide for such  
7 credit to be freely assignable; to provide for rules and regulations related to such income tax  
8 credit; to provide for certain conditions and limitations; to require annual reporting of certain  
9 statistics related to such credit; to provide for a tax credit for certain employers who purchase  
10 qualified investment property and create new full-time jobs; to provide for definitions; to  
11 amend Article 2 of Chapter 16 of Title 50 of the Official Code of Georgia Annotated, relating  
12 to the State Properties Code, so as to provide that certain property owned by the state shall  
13 be exempt from any fees imposed by any county or municipality for the management,  
14 collection, or disposal of storm water, whether or not the property is subject to a lease; to  
15 provide for related matters; to provide for effective dates, applicability, and automatic repeal;  
16 to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general  
20 provisions applicable to counties and municipal corporations, is amended by adding a new  
21 Code section to read as follows:

22 "36-60-17.2.

23 Land located within a railroad's right of way and covered with ballast and rail shall be  
24 exempt from any fees imposed by any county or municipality for the management,  
25 collection, or disposal of storm water; provided, however, that railroad stations,

26 maintenance buildings, or other developed land used for railroad purposes shall not be  
 27 exempt from storm-water fees."

28 **SECTION 2.**

29 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the  
 30 imposition, rate, and computation of and exemptions from state income taxes, is amended  
 31 by adding a new Code section to read as follows:

32 "48-7-40.34.

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

34 (1) 'Class III railroad' means a rail carrier classified as a Class III railroad by the United  
 35 States Surface Transportation Board in accordance with Section 1-1 of 49 C.F.R. 1201,  
 36 as it existed on January 1, 2018.

37 (2) 'Qualified railroad track maintenance expenditures' means gross expenditures for  
 38 maintaining railroad track, including roadbed, bridges, and related track structures, owned  
 39 or leased as of January 1, 2018, by a Class III railroad.

40 (b) A Class III railroad shall be given a credit against the tax imposed under this article for  
 41 a taxable year in the amount of 50 percent of the qualified railroad track maintenance  
 42 expenditures paid or incurred by such Class III railroad during the taxable year, provided  
 43 that such credit shall not exceed \$3,500.00 multiplied by each mile of railroad track owned  
 44 or leased in this state as of the close of the taxable year by such Class III railroad.

45 (c)(1) The credit given under this Code section shall only be allowed once for each mile  
 46 of railroad track in each taxable year.

47 (2) Such credit shall be given for each taxable year beginning on or after January 1,  
 48 2019, and ending on or before December 30, 2023, in which the conditions of this Code  
 49 section have been met.

50 (d) If a credit is given under this Code section with respect to any railroad track, the basis  
 51 of such railroad track shall be reduced by the amount of the credit so allowed.

52 (e) The tax credits given to a Class III railroad by this Code section that are not used by  
 53 such Class III railroad shall be freely assignable one time between January 1, 2019, and  
 54 January 1, 2024, by written agreement to a taxpayer subject to the tax imposed by this  
 55 chapter.

56 (f) On or before September 1 of 2020 and annually thereafter until 2024, the commissioner  
 57 shall issue a report to the chairpersons of the Senate Finance Committee and the House  
 58 Committee on Ways and Means concerning the tax credit created by this Code section,  
 59 which shall include the following statistics for the preceding taxable year:

60 (1) The total number of taxpayers that claimed a credit provided by this Code section;  
 61 and

62 (2) The number and total value of all credits earned and all credits applied during such  
 63 tax year pursuant to this Code section.

64 (g) The commissioner shall promulgate such forms, rules, and regulations as are necessary  
 65 to implement and administer the provisions of this Code section.

66 (h) This Code section shall be automatically repealed on January 1, 2024."

67 **SECTION 3.**

68 Said article is further amended by adding a new Code section to read as follows:

69 "48-7-40.35.

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

71 (1) 'New full-time employee job' shall have the same meaning as provided in Code  
 72 Section 48-7-40.

73 (2) 'Qualified employer' means a taxpayer that:

74 (A) Operates a facility in this state that recycles post-consumer waste materials into  
 75 polyester bulk continuous filament fibers;

76 (B) Certifies to the commissioner that between January 1, 2018, and  
 77 December 31, 2020, such taxpayer will purchase or acquire \$20 million of qualified  
 78 investment property for use in this state; and

79 (C) Certifies to the commissioner that between January 1, 2018, and January 1, 2020,  
 80 such taxpayer will create 25 new full-time employee jobs in this state.

81 (3) 'Qualified investment property' shall have the same meaning as provided in Code  
 82 Section 48-7-40.2.

83 (b) A qualified employer is allowed a credit against the tax imposed by this article in an  
 84 amount equal to the value of credits provided for in Code Section 48-7-40.2 that the  
 85 qualified employer claimed on original or amended returns on which such qualified  
 86 employer also claimed the credit provided for in Code Section 48-7-40 for the same  
 87 project.

88 (c) The credit allowed under subsection (b) of this Code section shall be subject to the  
 89 following conditions and limitations:

90 (1)(A) Any credit claimed under this Code section but not used in any taxable year  
 91 may be carried forward for ten years from the close of the taxable year in which the  
 92 credit was first claimed.

93 (B) The credit established by this Code section taken in any one taxable year shall be  
 94 limited to an amount not greater than 50 percent of the qualified employer's state  
 95 income tax liability which is attributable to income derived from operations in this state  
 96 for that taxable year.

97 (C) The sale, merger, acquisition, or bankruptcy of any qualified employer shall not  
 98 create new eligibility in any succeeding qualified employer, but any unused credit may  
 99 be transferred and continued by any transferee of such qualified employer.

100 (2)(A) The utilization of such credit shall not affect the qualified employer's ability to  
 101 claim depreciation for tax purposes on the assets acquired by such qualified employer.

102 (B) Such credit shall not have any effect on the qualified employer's basis in such  
 103 assets for the purpose of depreciation.

104 (3) Notwithstanding any other provision of this chapter to the contrary, a qualified  
 105 employer is authorized to claim on a tax return for a given project both the credit  
 106 provided for in this Code section and the credit provided for in Code section 48-7-40.2.

107 (d)(1) When the amount of the credit granted under subsection (b) of this Code section  
 108 exceeds 50 percent of the qualified employer's liability for taxes imposed under this  
 109 article in a taxable year, such qualified employer may take the excess as a credit against  
 110 such qualified employer's quarterly or monthly payments under Code section 48-7-103.

111 (2) Each employee whose qualified employer receives credit against such qualified  
 112 employer's quarterly or monthly payment under Code section 48-7-103 shall receive  
 113 credit against his or her income tax liability under Code section 48-7-20 for the  
 114 corresponding taxable year for the full amount which would be credited against such  
 115 liability prior to the application of this subsection.

116 (3) Credits against quarterly or monthly payments under Code section 48-7-103 and  
 117 credits against income tax liability under Code section 48-7-20 established by this  
 118 subsection shall not constitute income to the qualified employer or the employee.

119 (e) A qualified employer that fails to purchase or acquire \$20 million of qualified  
 120 investment property for use in this state between January 1, 2018, and December 31, 2020,  
 121 or fails to create 25 new full-time employee jobs in this state between January 1, 2018, and  
 122 January 1, 2020, shall not be a qualified employer and any tax imposed by this article upon  
 123 such taxpayer shall be increased by any reduction in tax allowed to such taxpayer pursuant  
 124 to the application of this Code section.

125 (f) After December 31, 2023, this Code section shall stand repealed in its entirety by  
 126 operation of law."

127 **SECTION 4.**

128 Article 2 of Chapter 16 of Title 50 of the Official Code of Georgia Annotated, relating to the  
 129 State Properties Code, is amended by revising Code Section 50-16-34.1, relating to  
 130 acquisition of property within railroad lines abandoned as operating rail lines, as follows:

131 "50-16-34.1.

132 (a) The State Properties Commission is empowered and may acquire from a railroad  
 133 company the real property, including the right of way, and any other properties, personal  
 134 or otherwise, associated therewith, encompassed within any railroad line that has been  
 135 abandoned as an operating rail line by said railroad company if the commission first  
 136 determines that preserving ownership of the said railroad corridor, in whole or in part, may  
 137 be useful for the present or future needs of public transportation in this state.

138 (b) Such an acquisition as described in subsection (a) of this Code section shall be in the  
 139 name of the state, custody in the commission, a 'property' similar to the state owned  
 140 properties described in subparagraphs (A), (B), and (C) of paragraph (8) of Code  
 141 Section 50-16-31, and may be made by the commission without a request to acquire from  
 142 another state agency, or without a request from another state agency, state authority, or  
 143 other instrumentality of the state to provide or perform acquisition related services. Any  
 144 property owned by the state as described in subsection (a) or in subparagraph (A) of  
 145 paragraph (8) of Code Section 50-16-31 shall be exempt from any fees imposed by any  
 146 county or municipality for the management, collection, or disposal of storm water, without  
 147 regard to whether the property is subject to a lease.

148 (c) Notwithstanding any provisions and requirements of law to the contrary and  
 149 particularly notwithstanding the requirements of Code Section 50-16-39, the commission,  
 150 acting for and on behalf of and in the name of the state, is empowered and may deed, lease,  
 151 rent, or license any such acquired property to any state authority or other instrumentality  
 152 of the state for public transportation use.

153 (d) Except as otherwise provided for in this Code section, the powers set forth in  
 154 subsections (a), (b), and (c) of this Code section are cumulative, and not in derogation, of  
 155 other powers of the commission as set forth in the 'State Properties Code.'

156 (e) The powers set forth in subsections (a), (b), and (c) of this Code section are intended  
 157 to be exercised independently of any power or action by any other state agency, state  
 158 authority, or other unit or instrumentality of government, but said powers are not intended  
 159 to repeal similar or related powers in any other state agency, state authority, or other unit  
 160 or instrumentality of government."

161 **SECTION 5.**

162 (a) Section 2 of this Act shall become effective upon its approval by the Governor or upon  
 163 its becoming law without such approval and shall be applicable to taxable years beginning  
 164 on or after January 1, 2019, and ending on or before December 31, 2023.

- 165 (b) Section 3 of this Act shall become effective upon its approval by the Governor or upon  
166 its becoming law without such approval and shall be applicable to taxable years beginning  
167 on or after January 1, 2018, and ending on or before December 31, 2023.
- 168 (c) The remaining sections of this Act shall become effective July 1, 2018.

169

**SECTION 6.**

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