

## Economic Development ADVISORY

April 10, 2012

### Georgia General Assembly Passes Economic Development-Friendly Bills During 2012 Session

During the 2012 legislative session, the Georgia General Assembly passed several bills with provisions aimed at having a positive impact on economic development in the State. These bills are currently awaiting the Governor's signature; we will continue to monitor their progress and provide status updates accordingly. Below are some highlights of these bills.

#### **HB 386**

##### ***Energy***

HB 386 exempts "energy which is necessary and integral to the manufacture of tangible personal property at a manufacturing plant" from state sales and use tax; such exemption is phased in over a four-year period.

HB 386 does, however, allow each county to tax energy at the local level. Such local excise tax will be phased in over the next several years, until 2016, when counties may impose the full level of tax at the rate of two percent. Counties choosing to levy the tax on energy must meet with municipalities to determine if the municipalities will participate in the levy as well.

##### ***Manufacturing and Agriculture***

HB 386 repeals numerous existing sales and use tax exemptions related to agriculture, poultry, manufacturing, timber and pollution control, while at the same time enacting new exemptions and definitions that pertain to these industries. Specifically, the new exemptions apply to:

- machinery or equipment that is necessary and integral to the manufacture of tangible personal property;
- industrial materials or packaging supplies; and
- agricultural production inputs, energy used in agriculture and agricultural machinery and equipment.

##### ***Incentives for Projects of "Regional Significance"***

HB 386 exempts sales of tangible personal property used in the construction of a "competitive project of regional significance," defined as "the location or expansion of some or all of a business enterprise's operations in this state where the commissioner of economic development determines that the project would have a significant regional impact." This provision is seen as a means of providing the State discretionary powers to provide incentives to attract businesses to Georgia.

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### **HB 397 – *Open Records***

HB 397 amends provisions related to Georgia’s open records law. In relevant part, the bill adds to the list of records that are not subject to disclosure “[d]ocuments maintained by the Department of Economic Development pertaining to an economic development project until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated.”

However, with respect to such projects, the department is required to “give notice that a binding commitment has been reached by posting on its website notice of the project in conjunction with a copy of [its] records documenting the bidding commitment made in connection with the project and the negotiation relating thereto and by publishing notice of the project and participating parties in the legal organ of each county in which the economic development project is to be located.”

### **HB 48 – *Inventory Exemption***

HB 48 expands the authority of a county or municipality to exempt business inventory from property taxation. Currently, Georgia authorizes counties to enact “freeport exemptions,” which exempt inventories of goods in the process of manufacture, inventories of finished goods (but only for 12 months), and inventories of finished goods stored in Georgia and destined for shipment outside the state (also for 12 months). HB 48 authorizes counties and municipalities to provide a “level 2 freeport exemption,” which will exempt a business’s inventory “of every character and kind...which would not otherwise qualify for” the existing exemption.

### **HB 868 – *Quality Jobs Tax Credits***

HB 868 amends several provisions related to Georgia’s quality jobs income tax credits. In particular, HB 868 explicitly adds biomedical manufacturers and manufacturers of alternative energy products for use in solar, wind, battery, bioenergy, biofuel and electric vehicle enterprises to the list of eligible “business enterprises.”

Further, HB 868:

- provides that a business may be eligible for one of the tax credits based on the activities of an individual establishment of the business (i.e., a single physical location where business is conducted);
- extends the six-year deadline to meet the job creation requirement by two years if the business has already purchased \$600 in qualified investment property, and by an additional four years if the business has purchased \$800 million in qualified investment property by the close of the eighth year; and
- increases the number of years in which tax credits may be awarded per new full-time job from four years to five years.

### **HB 1027 – *Film Tax Credits***

HB 1027 amends several provisions applicable to Georgia’s income tax credit program for filming in Georgia. First, HB 1027 allows a “qualified interactive entertainment production company” to be eligible for the credits, although the amount of such credit is capped at \$5 million (and \$25 million state-wide); such company is defined as “a company whose gross income is less than \$100 million that is primarily engaged in qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development.”

Second, HB 1027 adds “digital platforms designed for the distribution of interactive games” to the list of “qualified production activities,” which currently (and will continue to) include film, television and music video productions and interactive entertainment or sound recording projects used in such productions.

Third, HB 1027 allows an eligible company to offer “alternative marketing opportunities” to the Department of Economic Development in lieu of including a “qualified Georgia promotion” in the subject film or interactive work. Under the current law, including a qualified Georgia promotion in a production will allow the company an additional credit of ten percent of its investment. Participating in an alternative marketing opportunity will have the same effect.

On the minus side, however, HB 386 eliminates several sales and use tax exemptions with respect to film production companies and equipment.

## Discretionary Settlement Fund

Recently, a committee of state attorneys general negotiated a \$25 billion national settlement with five large mortgage servicers regarding allegations of foreclosure fraud. Georgia’s share of such settlement is \$815 million. Governor Deal has announced that approximately \$104 million of these funds will be used on areas of the state budget, such as economic development initiatives. Such funds will be available after a federal judge approves the draft settlement agreement, which could be as soon as this summer.

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