DEPARTMENT OF AUDITS AND ACCOUNTS

270 Washington St., S.W., Suite 1-156
Atlanta, Georgia 30334-8400

Greg S. Griffin
STATE AUDITOR
(404) 656-2174

March 3, 2021

Honorable Shaw Blackmon
Chairman, House Ways and Means
133 State Capitol
Atlanta, Georgia 30334

SUBJECT: Fiscal Note
House Bill 587 (LC 43 1940)

Dear Chairman Blackmon:

The bill would make multiple changes to existing income tax credits as well as establish new tax credits as follows:

- Sections 2-1 and 2-2 create an additional job tax credit (JCT) for medical device and pharmaceutical manufacturers qualified to claim a job tax credit under O.C.G.A. §48-7-40 or 40.1. Manufacturers in these industries would earn $1,250 per new job in addition to the amounts earned under those existing JTCs. This provision would become effective January 1, 2021, for tax year beginning on or after that date.
- Section 2-3 would increase the maximum amount of port activity tax credits under O.C.G.A. §48-7-40.15 that can be utilized in one year. Under current law, business enterprises claiming the credit may not offset more than 50 percent of their state income tax liability in any year, carrying forward unutilized balances. This bill would allow taxpayers to offset up to 100 percent of their state income tax liability and if any unutilized balance remains, use it to offset payroll withholding tax liabilities. These changes would be effective for credits earned on or after July 1, 2021.
- Sections 2-4 and 2-5 amend existing new facilities job and investment credits under O.C.G.A. §48-7-40.24 and 40.25 to allow high impact aerospace defense projects to claim both credits for the same project, to begin claiming the investment credit at a lower investment and jobs thresholds than under current law, and to claim up to $100 million in credits for a project versus $50 million under current law. These changes would be effective for projects after July 1, 2021.
- Sections 3-1 and 3-2 make a second $100 million allocation for the Georgia Agribusiness and Rural Jobs Act (GARJA), enabling rural funds to make additional credit-earning investments under O.C.G.A. §33-1-25. Application and maintenance fees associated with the program are also increased. These sections become effective July 1, 2021.

- Finally, section 4-1 extends the railroad track maintenance credit for five additional years through December 30, 2028.

Impact on State Revenue
Georgia State University's Fiscal Research Center (FRC) estimated that the bill would decrease state revenue by the amounts shown in Table 1. The high-impact aerospace defense project provisions would significantly impact state revenue, but the year of the effect could not be determined. The attached appendix provides details of the analysis.

Table 1. Summary of State Revenue Effects of HB 587 LC 43 1940

($ *millions*)	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Medical Device/Pharma Jobs	($1.0)	($5.2)	($4.1)	($3.6)	($3.4)	($3.6)
Port Activity		($2.1)	($1.3)	($0.8)	($0.4)	($0.3)
GARJA		$0.1	$0.0	($2.5)	($7.5)	($12.5)
RR Track Maintenance					($1.9)	($7.7)
Subtotal	**($1.0)**	**($7.2)**	**($5.3)**	**($6.8)**	**($13.1)**	**($24.0)**
Aerospace Defense Projects					($30)+	

Impact on State Expenditures
The Department of Revenue (DOR) would implement the provisions of the bill with existing resources. The Department of Community Affairs estimated annual costs of $50,000 to $75,000 for staff required to implement the GARJA application and oversight requirements. The legislation would likely double the number of rural funds subject to DCA oversight, and the agency did not receive additional funding to administer the original GARJA legislation.

Sincerely,

Greg S. Griffin
State Auditor

Kelly Farr, Director
Office of Planning and Budget

GSG/KF/mt

Analysis by the Fiscal Research Center

Section 2-1 and 2-2
Additional Job Tax Credit for Medical Device and Pharmaceutical Manufacturers
The subject bill supplements and expands O.C.G.A. §48-7-40 and 40.1 relating to the Georgia Job Tax Credit (JTC) by creating an additional credit for medical device and pharmaceutical manufacturers. Companies in these industries, defined as NAICS code classifications of 3391 and 3254, earn an additional credit of $1,250 per employee that otherwise qualifies for a JTC. The proposed credit can be used to offset the employer's tax liability for employee withholding as well as employer income or insurance premium taxes. Any earned but unused credit can be carried forward for up to 10 years. No credit can be earned under this provision for jobs created that also earn a personal protective equipment manufacturer credit under §48-7-40.1A. The credit is effective for taxable years beginning on or after January 1, 2021.

O.C.G.A. §48-7-40 and 40.1 establish a framework for defining each Georgia county into four tiers based on the local unemployment rate, per capita income, and percentage of populations below poverty level for purposes of earning the state job tax credit (JTC), with differing requirements and credit amounts by tier. In tier 1 (the 71 least developed counties), firms are required to add a minimum of two additional employee's year over year to qualify for JTCs. After meeting these requirements companies earn a JTC for each additional job created in that year. These credits continue for five years, assuming this new higher level of employment is maintained. In tier 2 counties, the threshold is 10 additional employees, tier 3 requires 15, and tier 4 requires 25. To be counted, employees' must be full time and be offered health insurance. LC 50 0129-EC adds an addition $1,250 credit to the JTCs earned under these requirements for as long as the JTC is allowed for a qualifying job, for companies manufacturing medical devices and pharmaceuticals.

The estimated number of current JTCs being earned by firms in these industries will be the basis for the fiscal impact estimates for the subject legislation. Data obtained from the Georgia Department of Labor (DOL) indicate that 378 companies were operating in Georgia in 2019 in NAICS 3391 and 3254. These data were used to calculate year over year job growth by company for the years of 2015 through 2019 to estimate the number of JTCs each firm could have claimed, accounting for tier 1-4 thresholds by county.

JTC-eligible hiring cohort estimates range from a low of 357 new jobs in CY 2019 to a high of 1,152 in CY 2018, and average 698 per year over the 2016-19 period. The 2020 cohort is assumed to decline by half from 2019 levels to 179; though state and national estimates from DOL through mid-year and the Bureau of Labor Statistics (BLS) through year-end 2020 show negative job growth in these industries, it is assumed that some firms will still increase employment and qualify for the credits. Thus, for hires made in 2017-20, medical device and pharmaceutical manufacturers are estimated to be eligible to claim JTCs for 2,378 jobs created. These cohorts of hires would also qualify for a JTC for the current, 2021 tax year and thus the new credit as well.

From this existing base of estimated JTC-eligible jobs in the relevant industries, projections of subsequent cohorts assume the following:

- For 2021 the low case cohort size is assumed to equal that of 2019, 357 credit-eligible hires. For the high case, the number is assumed to rebound faster, equaling the average credit-eligible hires for 2016-19.
- For 2022 and subsequent years, new cohort sizes are estimated based on projections from the Georgia State University Economic Forecasting Center (EFC) of overall job growth for the state (for 2022) and long-range job growth estimates from the BLS. The EFC projects overall jobs to rebound strongly in 2022, growing by 4.4 percent. BLS projects job growth of 2.4 percent annually in subsequent years.
- Low case cohort sizes equal the numbers implied by those growth rates of total employment. The high case allows for potentially faster growth of employment in the eligible industries and assume cohort sizes twice the low case levels.
- The estimates assume for simplicity that cohort sizes remain constant for the full five years they would be eligible for the credits, i.e. no attrition.
- Given the effective date of January 1, 2021 in the proposed bill and the existing JTC cohorts eligible for the new credit, the estimates assume that 24 percent of the credits earned for tax year (TY) 2021 will impact FY 2021 revenues through reduced estimated income tax and withholding tax payments. The remainder would impact FY 2022 revenues. TY 2022 and subsequent years' credits earned are assumed to impact state tax collections evenly over the year.
- Given that credits may be taken against withholding tax liabilities as well as income and insurance premium taxes, the estimates assume that all credits are utilized within the first calendar year after the tax year for which the credits are earned.

Table 2 summarizes the estimates for CYs 2021-26 while Table 3 provides fiscal year revenue effects for the high and low cases; the midpoint of those estimates is included in Table 1.

Table 2. Qualified Jobs for NAICS 3391 and 3254

	CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026
New Job Cohorts						
Low	357	448	255	261	268	274
High	698	896	510	523	535	548
Accumulated Credit Earning Jobs						
Low	2,735	2,493	1,596	1,500	1,589	1,506
High	3,077	3,282	2,640	2,806	3,162	3,012

Table 3. JCT for Medical Device and Pharmaceutical Manufacturer's Credit State Revenue Effects

($ *millions*)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
High	($0.9)	($4.8)	($3.5)	($2.8)	($2.3)	($2.4)
Low	($1.0)	($5.6)	($4.6)	($4.4)	($4.4)	($4.7)

Section 2-3
Increase the Income Tax Offset Allowable for the Port Activity Credit

The subject bill proposes to increase the maximum amount of port activity tax credits under O.C.G.A. §48-7-40.15 that can be utilized in one year. Under current law, business enterprises claiming the credit may not offset more than 50 percent of their state income tax liability in any year, carrying forward unutilized balances. This bill would allow taxpayers to offset up to 100 percent of their state income tax liability in a given year and if any unutilized balance remains, use it to offset payroll withholding tax liabilities. These changes would be effective for credits earned on or after July 1, 2021.

The estimated state revenue impact of this tax credit for FY 2022-26 relies upon data provided by the Georgia Department of Revenue (DOR) on the port activity credits generated and utilized from 2015 through 2019. The data and assumptions estimating the revenue effects are as follows:

- DOR data indicate that port activity credits earned averaged $5.0 million per year between 2015 and 2019 and $2.1 million, on average, were utilized annually. The estimates assume that under current law, half of the credits generated are utilized in the year earned, one quarter in the second year, one tenth each in the third and fourth years, and the reminder in the fifth year.
- The estimates assume that under HB 587, taxpayer's earning port activity credits will fully utilize credits in the year earned. Firms may be limited in their tax liability, but the legislation allows available credits in excess of state income tax liability in a given year to be claimed against payroll withholding taxes without limitation.
- According to data from the Bureau of Economic Analysis (BEA), Georgia's Gross State Product (GSP) grew on an annual basis by an average of 5 percent per year from 2012 through 2019. This growth rate is assumed for port activity credits generated from CY 2020 through CY 2026.

Table 4 details the estimated amount of port activity credits generated and their utilization under current and proposed law for CY's 2022-26 based on these data and assumptions. Estimated revenues effects by state fiscal year, assuming credits impact tax collections evenly over the year, are presented in Table 1.

Table 4. Port Activity Credits Generated and Utilized in CY 2021-2026

($ *millions*)	CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026
Credits Earned	$5.5	$5.7	$6.0	$6.3	$6.6	$7.0
Utilized Current Law	$2.7	$4.2	$5.0	$5.8	$6.4	$6.7
Utilized Proposed Law	$5.5	$5.7	$6.0	$6.3	$6.6	$7.0
Revenue Effect	($2.7)	($1.5)	($1.0)	($0.5)	($0.3)	($0.3)

Section 2-4 and 2-5
High Impact Aerospace Defense Project Credit
The subject bill proposes to amend O.C.G.A. §48-7-40.24, the new facilities jobs credit, and §48-7-40.25, the new manufacturing facilities investment credit, to modify certain conditions for high-impact aerospace defense projects, as defined. If enacted, the bill would allow qualifying U.S. defense contractors to earn both the new facilities investment credit and either (but not both) of two jobs credits, the new facilities jobs credit or the quality jobs credit under O.C.G.A. §48-7-40.17, for the same project where such stacking of credits is not allowed under current law.

In addition, the bill would allow the taxpayer to begin claiming the investment credit upon reaching investment and job creation thresholds that are lower than under current law. Finally, the bill would increase the maximum amount of the new facilities investment credit for qualifying defense projects from $50 million to $100 million. The bill would become effective upon signing and apply to high-impact aerospace defense projects certified by the Georgia Department of Economic Development on or after July 1, 2021.

Given the large scale and narrow industry qualifications for the modified credit terms, and uncertainties around awards of large defense contracts to support projects of this scale, eligible projects are likely to be infrequent. Projecting fiscal costs tied to specific state fiscal years is not possible without information on investment and job creation plans, and timelines for specific projects currently planned or under consideration.

Nevertheless, one such project is reportedly planned, contingent on bidding and award of one or more federal contracts over the next 1-3 years. If awarded, such contract(s) could be expected to result in investment credits of $30 million or more being claimed by FY 2026 that would not be available under current law. It is, of course, possible that other potential projects could arise, or that investment and job creation timelines could be accelerated, such that the amount of credits claimed in the next five years could be materially higher.

Current-Law Summary of Relevant Credit Provisions
The changes proposed by HB 587 regarding the proposed high impact aerospace project credits that effect state revenues are best understood in how they interact with existing credits that are conditioned on job creation and business investment. Current law terms of the three credits impacted by the bill are as follows:

§48-7-40.17 Establishing or Relocating Quality Jobs Credit
- Requires $2.5 million in qualified investment and new jobs totaling 10 new jobs in tier 1 counties, 25 new jobs in tier 2 counties, or 50 new jobs in any other county.
- Credits amounts range from $2,500 per job paying at least 110 percent of the county average wage to $5,000 per job paying at least 200 percent of the county average wage.
- Credits may be claimed for up to five years, subject to job maintenance requirements.

§48-7-40.24 New Facilities Jobs Credit
- Requirements:

  - 1,800 new jobs created within 6 years, subject to extension to 8 years if $600 million in qualified investment is made within 6 years and to 10 years if $800 million within 8 years;
  - Either $150 million or more of annual payroll or $450 million of qualified investment; and
  - Qualifying new jobs are full-time (35+ hours/week) and pay at or above the average wage of the county with the lowest average wage in the state.
- Credit amount is $5,250 per job for five years, subject to recapture based on failure to meet job and payroll maintenance requirements. Only jobs created by the end of the 7th year qualify for a credit, unless the $600 million within 6 years or $800 million within 8 years investment thresholds are met, in which cases new jobs created within 8 year or 10 years, respectively, can earn a credit. No more than 4,500 such new jobs can earn a credit.

§48-7-40.25 New Manufacturing Facilities Investment Credit
- Requires a minimum of $800 million of qualified investment and 1,800 qualified new jobs. Qualifying new jobs are full-time (35+ hours/week) and pay at or above the average wage of the county with the lowest average wage in the state.
- Credit amount is 6 percent of qualified investment made through the tax year in which the investment and new jobs requirements are met, and in subsequent tax years the amount of additional qualified investment made in each year, subject to a maximum credit of $50 million per project.

Under current law, a taxpayer may not claim more than one of these credits for the same project, but rather must choose only one. In the case of the jobs credits, they also may not switch between credits, for example switching to the quality jobs credit if they fail to meet the requirements for the larger new facilities job credit.

Proposed changes in HB 587
Under the proposed law, restrictions on "stacking" of these credits are relaxed for high-impact aerospace defense projects as follows:

- Lines 378-381 allow a taxpayer claiming the investment credit to also claim, for the same project, either the quality jobs or the new facilities jobs credit.
- Lines 161-166 allow a taxpayer eligible for and claiming the new facilities jobs credit for a given project to also claim the quality jobs credit for the same project, provided that they may not claim both jobs credits for the same project in the same tax year.

In addition, high-impact aerospace defense projects may claim the investment credit beginning upon reaching $500 million of qualified investment and 1,000 qualifying new jobs for the project. Though the project application for the credit must assert an intention to hire 1,800 full time employees and purchase $800 million in qualified investment, the credits claimed after meeting the lower thresholds are not recaptured if the higher levels are not reached. Finally, high-impact aerospace defense projects may claim up to $100 million in investment credits, up from the current-law limit of $50 million.

These modified terms would be available for projects "constructed by a business enterprise that is a prime aerospace defense contractor with greater than 40 percent of its revenues derived from sales to the United States government in its most recently completed tax year; and certified by the commissioner of economic development as materially supportive of the mission of the Georgia Joint Defense Commission and the Governor's Defense Initiative."

As a result of these changes, a high-impact aerospace defense project that would have qualified under current law for the new facilities investment credit or the new facilities jobs credit, but not both, would be able to claim both credits and would be able to start utilizing investment credits sooner, upon reaching the lower thresholds, than under current law. If the project ultimately falls short of the higher thresholds, the taxpayer would be able to claim the quality jobs credit instead. Also, in the case of failure to meet job maintenance requirements of the new facilities jobs credit, the apparent ability to amend returns to take the quality jobs credit instead would reduce the cost of recapture.

Fiscal Impact
Given the large scale and narrow industry qualifications for the modified credit terms, eligible projects are likely to be infrequent, so projecting fiscal costs tied to specific state fiscal years is not possible without information on investment and job creation plans and timelines for specific projects currently planned or under consideration. At this time, one project has been the subject of public discussion, including in a Ways and Means subcommittee hearing during the week of February 22-26. Lockheed Martin Corporation reportedly discussed its plans for the company to bid on federal defense contracts that, if successful, would involve investing up to $3.3 billion and creating between 1,800 and 3,300 jobs. The timeline for the project would be over several years, contingent on a bidding process over the next 1-3 years.

Assuming an initial contract award in calendar year 2022, it is assumed the project would reach the initial thresholds for claiming the investment credit by 2025. In this event, at least $30 million of investment credits could be expected to be claimed by FY 2026. Jobs credits claimed would not change versus current law.

Section 3-1 and 3-2
Additional Funding for Georgia Agribusiness and Rural Jobs Act
The Georgia Agribusiness and Rural Jobs Act (GARJA) credit is available under O.C.G.A. §33-1-25 to qualified low-income community rural investment funds, with available credits allocated through an application process administered by the Georgia Department of Community Affairs (DCA) and earned based on qualified investments made. The credit amount is 15 percent of the eligible investment per year beginning in the third year after the investment is made and continuing through the sixth year, for a total credit equal to 60 percent of the eligible investment. The credit is nonrefundable and may not be sold but may be carried forward indefinitely. Credits may be utilized against state income and insurance premium taxes. The amount of credits available under current law capped at $100 million.

GARJA began taking applications April 2, 2018, from funds for allocations from the first funding round of $100 million, which was fully allocated to five certified rural funds by summer of 2019.

HB 587 provides for a second funding round of $100 million, with applications from rural funds seeking to participate to be accepted beginning August 1, 2021. HB 587 also would increase the application fee for GARJA funds from $5,000 to $25,000 and establish an annual maintenance fee per fund of $7,500, payable starting one year after an application is approved.

The estimated state revenue impact of this tax credit for FY 2022-26 relies upon data provided by DCA on the performance of the initial allocation of GARJA funding. The following summarizes the key assumptions in projections of credits from the second funding round:

- According to DCA, by spring 2019, $15 million in investments had been made and all funds had been fully invested by June 30, 2020. The estimates assume that the new allocation of $100 in GARJA funding will be fully invested by CY 2024, $33.3 million each year, CY 2022-24.
- The original funding round resulted in equal allocations to five certified rural investment funds. The estimate assumes the proposed second funding round will also result in five approved applicant investment funds. Thus, the revenue effects include $125,000 in application fees, which are assumed to be collected between August 1, 2021 and the end of the fiscal year, and $37,500 in annual maintenance fee payments starting one year after applications are approved.

Table 5. GARJA Investment, Credits and State Revenue Effects for FY 2021-26

($ *millions*)	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026
GARJA Investments	$33.3	$33.3	$33.3	-	-
Credits Generated	-	-	$5.0	$10.0	$15.0
Application Fee	$0.13	-	-	-	-
Maintenance Fee	-	$0.04	$0.04	$0.04	$0.04

Section 4-1
Railroad Track Maintenance Tax Credit, Extend
The subject bill provides an extension to the income tax credit to maintenance expenditures related to railroad track owned or leased by Class III railroads. The extension allows the tax credit to be earned until December 30, 2028 instead of the current-law sunset date of December 30, 2023.

The credit allowed is equal to 50 percent of railroad track maintenance expenditures, subject to a maximum credit of $3,500 per track mile owned by the Class III railroad per year. Qualified rail maintenance expenditures covered by this bill include costs to maintain track, roadbed, bridges, and all related track structures owned or leased by a Class III railroad. Per Department of Revenue regulation 560-7-8-.64, credits may not exceed tax liability for the year claimed and may not be carried forward, but may be transferred to one or more other taxpayers at any time (but only once) for utilization against such transferees' tax liability for the same tax year.

This credit is modeled of the federal railroad track maintenance credit under 26 U.S. Code § 45G. This program provides tax credits to Class II and Class III railroads and other qualified persons for 50 percent of track maintenance costs not to exceed $3,500 per mile. The federal credit is scheduled to expire at the close of 2023.

The estimated state revenue impact of this tax credit for fiscal years 2022-2026 relies upon data provided by the Georgia Department of Transportation (GDOT) in its 2015 Georgia State Rail Plan (the latest such plan available) as well as reports from the Department of Revenue (DOR) on approved credits to date for maintenance expenditures in tax year (TY) 2019.

- In 2014, Class III railroads collectively operated (owned and leased) a total of 1,362 track miles in the state. According to estimates reported on GDOT's website, 23 so-called shortline (presumably Class III) railroads currently operate 1,538 miles of track in the state.
- This figure appears to understate the effective miles of track for purposes of applying the $3,500 per mile per year limit on credits because DOR reports that, as of February 9, 2021, approximately $6.23 million of credits for TY 2019 (the only period with reported preapprovals since enactment of the credit) have been preapproved, implying average credits per mile of track of $4,050. However, for purposes of applying the $3,500 per mile per year limit, segments of multiple tracks (e.g. two tracks running parallel) count separately for purposes of the limit, but are apparently not counted in reported track miles in the GDOT reports or other sources.
- Previous fiscal note estimates before enactment of the credit included a low case based on the tabulation of 4-year maintenance project plans in the 2015 GDOT report for Class III railroads, applying the $3,500 per mile per year credit limit where a given railroad would reach the cap. Planned expenditures at the time of the report total approximately $40.8 million over four years, resulting in credits earned averaging approximately $2.5 million per year. The high case estimates assumed the maximum credit per mile for the 1,362 miles reported by GDOT, resulting in credits totaling about $4.8 million per year. Neither methodology is consistent with DOR reported credit preapprovals.
- Given the higher level of actual credits approved to date for TY 2019, the estimates herein assume credits grow from those levels by about 4 percent annually, 2 percent for growth in track miles (the average growth rate from GDOT's 2014 track miles estimate to its current estimate) plus 2 percent inflation in maintenance costs.
- DOR also reports that of the $6.23 million of preapproved credits for TY 2019, only $24,660 have been utilized on 2019 tax returns processed to date. It is assumed that the balance of credits have been, or will be, sold and utilized by other taxpayers, as the law and regulations permit. While it is uncertain when utilization of these credits will impact state tax collections, it is assumed that the low utilization of TY 2019 credits by the time of this note is a result of 2019 being the first year the credit was available. To be conservative, future credits are assumed be utilized to a greater degree – 25 percent – on tax returns filed in the first half of the following calendar year (e.g. the second half of FY 2021 for credits earned in 2020) with the balance utilized in the following fiscal year. Thus, credits earned for the periods of extended availability of the credit, tax years beginning on or after January 1, 2024, would first impact state revenues in FY 2025.

Resulting projections of state revenue impacts of extending expiration of this credit are provided in Table 6 as well as Table 1.

Table 6. Railroad Maintenance Credit, Extend State Revenue Effects

($ *millions*)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Change in Revenue	-	-	-	($1.9)	($7.7)