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Bill Analysis

Costly Corporate Tax Break Package Would Give Millions to Wealthy Corporations

Bill Analysis: House Bill 587 (LC 43 1970S)

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Key Takeaways:

- House Bill 587 includes a program referred to nationally as CAPCO but dubbed the Georgia Agribusiness and Rural Jobs Act (GARJA) credit. The bill would authorize a second round of $100 million in funding to finance an expensive tax credit program that operates through state-sponsored quasi-venture capital funds.
- HB 587 also includes a special $50 million carveout to allow qualifying U.S. defense contractors to claim both the new facilities investment credit and qualifying state jobs tax credits, which is not currently allowed under state law. This provision aims to target Lockheed Martin.
- CAPCO is pitched as a job creation incentive, but in other states, few jobs have been created and they have come at high cost. Although this would be the second round of CAPCO funding, to date, the state has not yet evaluated the effects of the program, further calling into question the wisdom of doubling down with an additional $100 million in funding for a second round of grants. In this model, the state also takes on almost the entire risk of investing.
- The U.S. Congress just passed legislation that could send $8.2 billion in aid to Georgia, including $4.7 billion directly to the state. The provisions in HB 587 could put up to $150 million of that funding at risk—and at a time when our state budget is facing $1.2 billion in cuts.

The Georgia House of Representatives has passed House Bill 587, a measure that GBPI estimates could direct over $185 million from Georgia taxpayers to benefit a small group of large corporations when fully implemented (by Fiscal Year 2028).[1]

HB 587 would:

1. authorize the state of Georgia to issue $100 million in tax credits for a program known nationally as CAPCO. Simply put, the program would hand over $100 million in Georgia taxpayer money to state-financed venture capital funds in hopes of receiving an indirect return from tax revenue generated by supposed new economic activity, which has failed to materialize in multiple states that have created similar programs over the last two decades;[2]
2. double the current state maximum tax credit for large investments for new facilities from $50 million per project to $100 million for only the aerospace industry, in an apparent bid to incentivize Lockheed Martin to invest funds from upcoming federal defense contracts in Georgia, and reduce job and investment thresholds required under current law so that the company can receive additional tax credits (total cost of $30-$50 million; the timeline depends on company tax decisions);[3]
3. create a new stackable job tax credit (JTC) for medical device and pharmaceutical manufacturers ($5.2 million in FY 2022);[4]
4. remove caps on the state's port activity tax credit to allow corporations to offset 100 percent of their state income tax liability and utilize any additional credits to offset payroll withholding taxes ($2.1 million in FY 2022); [5] and
5. extend Georgia's current railroad track maintenance tax credit for five years through the end of 2028 (up to $7.7 million in FY 2026).[6]

If HB 587 is enacted, according to state estimates prepared for the version passed by the full House (LC 43 1970S), $150 million in new tax credits could be hastily granted to just six corporations based on a deeply flawed economic development strategy that seeks to grant special treatment to individual corporations—far beyond what is allowed under current law—while simultaneously lowering requirements for job creation and economic investment.

CAPCO – $100 Million in Tax Credits Proposed for Discredited Investment Scheme

Referred to nationally as CAPCO but dubbed the Georgia Agribusiness and Rural Jobs Act (GARJA) credit, House Bill 587 would authorize a second round of $100 million in funding to finance an expensive tax credit program that operates through state-sponsored quasi-venture capital funds, adding to $100 million in tax credits approved through legislation passed in 2017 that was fully disbursed to five firms—with each receiving $20 million in credits—in 2019.

Beginning in August of 2021, the state would issue $100 million in tax credits to a small group of large corporations (eligibility requires at least $100 million in existing investments). The program's design is both flawed and convoluted. Essentially, corporations take out loans against the value of future tax credits, which can be used indefinitely for both insurance premium taxes and income taxes. They then can direct a significant share of the funds received to safe, relatively low return investments, while taking advantage of loose restrictions to allow insurance companies and professional financial firms to profit from their tax credits. After six years, these firms can apply to exit state oversight, at which point they would be free of any obligations to maintain jobs or investments in the state.[7] This process is unlikely to create long-term jobs in Georgia and offers little accountability after tax credits are granted to corporations but comes at a steep and direct cost of $100 million to state taxpayers through revenue lost from existing state income and insurance premium taxes. A 2017 investigation by Pew Charitable Trusts concluded that "states that have evaluated the multilayered subsidized lending programs… have found that they fail to deliver promised jobs and tax revenue."[8]

The state fiscal note produced for HB 587 notes that only five corporations received equal funding of $20 million in tax credits each in the first round of $100 million in funding that was authorized through legislation passed in 2017 and fully allocated by the summer of 2019. To date, the state has not yet evaluated the effects of the program, further calling into question the wisdom of doubling down with an additional $100 million in funding for a second round of grants.

Under the funding model authorized by the GARJA credit, the state would almost entirely take on the risk that companies and investors traditionally hold in a venture-capital model. Companies are able to earn credits valued at up to 60 percent of their total eligible investment and credits can be carried forward indefinitely. After six years from the closing date when credits are granted, companies are allowed to apply to exit the program, at which point they would no longer be subject to regulation and could effectively move on from any job or investment commitments made to the state of Georgia while profiting from the full value of tax credits granted.[9]

CAPCO Failures in Other States

Auditors and investigators in other states determined participating financial firms often use unorthodox investment and accounting maneuvers to satisfy the bare legal requirements of the program. For example:

- In the first state to adopt the program, Louisiana, a state-sanctioned report in 2000 described CAPCOs as “expensive and inefficient” and found that while the state had awarded more than $600 million in CAPCO credits since its inception, there had been only $180 million in CAPCO-related investments. Mike Williams of the Louisiana Department of Economic Development told a reporter investigating the program, “If you’re going to set up something, look at what we did and do the exact opposite.”[10]

- An in-depth review by Maine’s flagship newspaper determined that the state’s version of the program allowed one financial firm to claim $16 million in tax credits in exchange for an investment only half that size in a local textile plant. A tax credit payout that big was supposed to require a $40 million investment under Maine’s program rules, but “the reality is most of that $40 million was a mirage.” The plant closed soon after receiving the money, laying off 200 people. Banks and investment firms in Maine managed to pocket over $16 million in fees and charges from the $76 million in tax credits offered by that state, a take of more than 21 percent.[11]

- And in Arkansas, the director of the state’s economic development commission said in 2013 “The best we’ve been able to determine [is] somewhere between 25 percent and 30 percent of the value of the tax credits make it to the end-project company. That means 70 percent of the value of the tax credit is going someplace else. Where? I’m not sure anyone is completely sure.”[12] One of the places the unaccounted-for dollars tend to go is exorbitant interest and fees, which amounted to $16 million, or 21 percent, of the funds allocated for Maine’s program.[13] Current Georgia state law allows for “reasonable and necessary” expenditures for professional services, with no caps or limits, and only caps annual management fees at 2 percent of each fund’s investment portfolio.

As state lawmakers consider an FY 2022 budget that proposes continuing $1.2 billion in budget cuts from FY 2020 levels and underfunding Georgia's QBE funding formula for K-12 public schools by $393 million, Georgia cannot afford to allocate $100 million to a discredited, wasteful tax credit scheme.[14]

HB 587 Proposes Changing State Law for Lockheed, Offers Massive $100 Million Incentive to Bring Federal Government Contract to Georgia

HB 587 includes a special carveout to allow qualifying U.S. defense contractors to claim both the new facilities investment credit and qualifying state jobs tax credits, which is not currently allowed under state law. This provision aims to target Lockheed Martin. The legislation also includes a specially targeted provision that doubles the maximum value of the state's new facilities investment tax credit from $50 million to $100 million for qualifying defense projects. Further, HB 587 would weaken current eligibility requirements to allow credits to be claimed under lower investment and job thresholds, far below what is allowed under current law. Qualifying defense contractors would be able to claim the credit at a lower minimum investment threshold of $500 million, down from the current threshold of $800 million, and for 1,000 employees, down from the required 1,800 under current law.

At a cost of over $50 million, these changes to state law are an example of offering special-interest tax treatment to a single corporation at the expense of working Georgians and the broader state economy. The state fiscal note offers that, "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." [15] Even if the full scope of investment envisioned is achieved, Georgia taxpayers would still pay a steep cost per job created.

Total Fiscal Impact of HB 587 (FY 2022 to FY 2028)	
Provision	**Cost**
CAPCO/GARJA Tax Credit Program	$100 Million
Qualified Aerospace Project/Lockheed Martin Corporation Special-interest Tax Break	$50 Million+
Medical Device/Pharmaceutical Credit	$20.9 Million (FY 2021-26)
Port Activity Credit Changes	$4.9 Million (FY 2022-26)
Railroad Track Maintenance Extension	$9.6 million (FY 2025-26)
Total:	**$185.4 Million**

Source: GBPI analysis of HB 587 (LC 43 1970 S); Georgia Department of Audits and Accounts, Fiscal Note on House Bill 587 (LC 43 1940).

Pending Federal Law Means Risky Corporate Tax Credits Could Cost State Twice as Much

As passed by the U.S. Congress, the American Rescue Plan (ARPA)—the $1.9 trillion package advancing through Congress that could send $8.2 billion in aid to Georgia, including $4.7 billion directly to the state—includes a clause intended to prevent states from using short-term federal resources to enact costly tax cuts.[16] The provision states that if any state changes its laws in a way that reduces net tax revenue any time after March 3, 2021, and before the state has spent its entire federal allocation (or by 2024), the U.S. Department of Treasury is authorized to deduct an equivalent amount from the aid received by the state.

This provision could mean that, if HB 587 is enacted and costs the state $150 million over the next two years, Georgia could also lose $150 million of this federal aid, resulting in a net cost of $300 million. While the further guidance is still needed from Department of Treasury on how the federal law will impact Georgia, HB 587 carries significant risk to the state that far outweighs the value of offering over $150 million in tax subsidies to corporations.

Conclusion

Amidst the historic challenges facing the state during the COVID-19 pandemic, including a revenue shortfall that has led to House lawmakers to pass an FY 2022 budget with $1.2 billion in cuts from FY 2020 funding levels, the Georgia General Assembly should not prioritize approving new special-interest tax breaks over funding the state's public education system and ailing health care infrastructure. HB 587 would commit the state to financing up to $150 million in wasteful, low-return tax credits to a limited group of corporate interests. Rather than enriching out-of-state shareholders and opaque venture capital funds, Georgia's leaders should first focus on restoring the considerable ground lost to the pandemic in the core areas of public education, health care, economic mobility and improving the capacity of state government to meet the needs of Georgians.

End Notes

[1] Georgia Economic Renewal Act of 2021, https://www.legis.ga.gov/legislation/59948 (LC 43 1970S, Rules Committee Substitute)

[2] GBPI estimate of HB 587 (LC 43 1940); Tharpe, W. (2012, January). *CAPCO: A bad investment for Georgia*. Georgia Budget and Policy Institute. http://gbpi.org/wp-content/uploads/2012/01/capco_a_bad_investment_for_georgia01102012t.pdf

[3] Georgia Department of Audits and Accounts, Fiscal Note on House Bill 587 (LC 43 1940), page 2, https://www.legis.ga.gov/api/legislation/document/20212022/199598.

[4] Georgia Department of Audits and Accounts, Fiscal Note on House Bill 587 (LC 43 1940), page 2, https://www.legis.ga.gov/api/legislation/document/20212022/199598.

[5] Georgia Department of Audits and Accounts, Fiscal Note on House Bill 587 (LC 43 1940), page 2, https://www.legis.ga.gov/api/legislation/document/20212022/199598.

[6] Georgia Department of Audits and Accounts, Fiscal Note on House Bill 587 (LC 43 1940), page 2, https://www.legis.ga.gov/api/legislation/document/20212022/199598.

[7] Wesley Tharpe. (2012, January). *CAPCO: A bad investment for Georgia*. Georgia Budget and Policy Institute. http://gbpi.org/wp-content/uploads/2012/01/capco_a_bad_investment_for_georgia01102012t.pdf

[8] Jen Fifield, “In search of rural jobs, states weigh strategy with checkered past,” PEW, March 30, 2017.

[9] O.C.G.A. § 33-1-25, “Georgia Agribusiness and Rural Jobs Act” current state law; Georgia Department of Audits and Accounts, Fiscal Note on House Bill 587 (LC 43 1940) page 8.

[10] State Science & Technology Institute. Weekly Digest. 2004 cited in: Wesley Tharpe. (2012, January). *CAPCO: A bad investment for Georgia*. Georgia Budget and Policy Institute. http://gbpi.org/wp-content/uploads/2012/01/capco_a_bad_investment_for_georgia01102012t.pdf

[11] Whit Richardson, ”Payday at the mill: How sophisticated financiers used a Maine investment program they devised to wring millions of dollars in risk-free returns at taxpayer expense,” Maine Press Herald. (2015, April 19). https://www.pressherald.com/2015/04/19/payday-at-the-mill/

[12] Ryan Saylor. ”State Tax Credit Program Drawing Intense Scrutiny,” November 2013. The City Wire. https://talkbusiness.net/2013/11/state-tax-credit-drawing-intense-scrutiny/

[13] Whit Richardson, ”Payday at the mill: How sophisticated financiers used a Maine investment program they devised to wring millions of dollars in risk-free returns at taxpayer expense,” Maine Press Herald (2015, April 19). https://www.pressherald.com/2015/04/19/payday-at-the-mill/

[14] *See* Danny Kanso & Alex Camardelle. (2021, February 26). “Georgia Tax Breaks Don’t Deliver.” Georgia Budget and Policy Institute. https://gbpi.org/georgia-tax-breaks-dont-deliver/

[15] Georgia Department of Audits and Accounts. (2021, March 3). Fiscal Note on House Bill 587 (LC 43 1940) (p. 8). https://www.legis.ga.gov/api/legislation/document/20212022/199598

[16] GBPI analysis, March 2021