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SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions

Richard Hardeman
rhardeman3@student.gsu.edu

Aidan Zafar
azafar3@student.gsu.edu

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GENERAL ASSEMBLY

Amend Title 28 of the Official Code of Georgia Annotated, Relating to the General Assembly, so as to Provide for Economic Analyses to be Conducted for Certain Tax Benefits upon Request by the Chairpersons of the House Committee on Ways and Means and the Senate Finance Committee; Provide for Limits; Provide for Summaries to be Attached to Related Fiscal Notes; Amend Title 48 of the Official Code of Georgia Annotated, Relating to Revenue and Taxation, so as to Provide for a Tax Credit for Medical Equipment and Supplies Manufacturers and Pharmaceuticals and Medicine Manufacturers; Provide for Definitions; Provide for Conditions and Limitations on Certain Tax Credits; Provide for an Effective Date and Applicability; Change Job Limits and Revise the Requirements for such Tax Credit for Certain Projects; Provide for Tax Credits for High-Impact Aerospace Defense Projects; Revise a Job Tax Credit; Allow such Tax Credit to be Taken in Conjunction with Other Tax Credits; Revise a Manufacturing Tax Credit; Provide for Reporting; Amend Code Section 48-7-40.34 of the Official Code of Georgia Annotated, Relating to Tax Credits for Class III Railroads and Reporting, so as to Extend an Income Tax Credit for Expenditures on the Maintenance of Railroad Track Owned or Leased by Class III Railroads; Amend Title 48 of the Official Code of Georgia Annotated, Relating to Revenue and Taxation, so as to Extend the Sunset Date for the Exemption for Projects of Regional Significance; Exempt Sales of Tickets, Fees, or Charges for Admission to Certain Fine Arts Performances or Exhibitions from Sales and Use Taxes; Provide for Automatic Repeal; Renew a Sales Tax Exemption for Maintenance and Replacement Parts Used in Machinery or Equipment That Is Used to Mix, Agitate, and Transport Freshly Mixed Concrete; Extend the Sunset Provision for an Exemption for Sales Taxes on Certain Tangible Personal Property Sold or Used to Maintain, Refit, or Repair a Boat during a Single Event; Revise Certain Tax Credits for the Rehabilitation of Historic Structures; Revise the Aggregated Cap; Provide for Definitions; Repeal Section 2 of Ga. L. 2015, p. 1340, Approved May 12, 2015; Revise a Limitation on Business Enterprises Eligible for a Tax Credit for Research and

Development; Revise an Exemption for the Sale or Lease of Certain Computer Equipment; Provide for Clarification, with Respect to a Sales Tax Exemption for Certain Computer Equipment, That the Exclusion for Telephone Central Office Equipment or Other Voice Data Transport Technology in Subdivision (68)(C)(ii)(I) of Code Section 48-8-3, which Became Effective October 1, 2002, Includes any Wireline or Wireless Telecommunication System; Provide for Reporting; Provide for an Automatic Repeal; Provide for Related Matters; Provide for Short Titles; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 28-5-41.1 (new);
48-7-29.8 (amended); 48-7-40.1A
(amended); 48-7-40.1B (new);
48-7-40.12 (amended); 48-7-40.24
(amended); 48-7-40.25 (amended);
48-8-3 (amended)

BILL NUMBER: SB 6

ACT NUMBER: 166

GEORGIA LAWS: 2021 Ga. Laws 289

SUMMARY: The Act provides for the review of tax credits and deductions while extending or creating various tax credits and deductions. First, the Act allows certain government officials to request a review of up to five tax credits or deductions per year to evaluate their economic efficiency. Second, the Act creates or extends tax credits and deductions for medical and pharmaceutical manufacturers, high-impact aerospace defense projects, short-line railroads, ticket sales for fine arts performances, rehabilitation of historic structures, yacht maintenance, and projects of regional significance.

EFFECTIVE DATE: July 1, 2021

History

Georgia has remained the number one state for business over the past eight years due, in part, to its favorable tax environment.¹ To ensure that the tax credits and incentives fostering this environment work as intended, it is necessary to periodically measure their effectiveness.² In 2017, the Georgia legislature passed Senate Resolution 222, creating the Senate Study Committee on Special Tax Exemption, which conducted a comprehensive analysis of six individual state tax credits.³ The Committee found three of those incentives to have a poor return on investment, setting the stage for the passage of Senate Bill (SB) 328, which eliminated those incentives.

Recognizing the need for a continuous monitoring system, Senators John Albers (R-56th), Chuck Hufstetler (R-52nd), and others introduced legislation in the 2019–2020 session of the Georgia General Assembly aimed at establishing an annual, independent economic analysis for up to five tax credits per year.⁴ SB 120 passed both houses of the Georgia legislature with overwhelming support but was vetoed by Governor Brian Kemp, who cited concerns about the lack of an independent body to conduct the economic analysis.⁵ Responding to the Governor’s concerns, the bill’s sponsors modified SB 120 to place the responsibility of conducting the economic analysis on the Office of Planning and Budget and reintroduced the bill in the 2021–2022 legislative session as SB 6.⁶

1. See Tim Kephart, *Kemp Announces Ga. #1 State for Business for 8th Straight Year*, CBS 46 (Nov. 12, 2020), https://www.cbs46.com/news/kemp-announces-ga-1-state-for-business-for-8th-straight-year/article_79d397c4-24ea-11eb-afae-d735dd525fa7.html [https://perma.cc/KM3A-TP2U]; Dave Flessner, *Georgia, Tennessee Rank at the Top Among Best States for Doing Business*, CHATTANOOGA TIMES FREE PRESS (Sept. 2, 2020), <https://www.timesfreepress.com/news/business/aroundregion/story/2020/sep/02/top-states-doing-business/531414/> [https://perma.cc/GCT6-66UQ].

2. GA. STATE SENATE, SENATE RSCH. OFF., *THE FINAL REPORT OF THE SENATE STUDY COMMITTEE ON SPECIAL TAXATION 2* (2017), https://www.ncsl.org/Portals/1/Documents/fiscal/evaluation_database/2017_Georgia_Final_Report_of_the_Senate_Study_Committee_on_Special_Tax_Exemption.pdf [https://perma.cc/X224-2576].

3. *Id.* at 1, 3.

4. See generally SB 120, as introduced, 2019 Ga. Gen. Assemb.

5. Georgia Senate Voting Record, SB 120, #395 (Apr. 2, 2019); Georgia House of Representatives Voting Record, SB 120, #351 (Mar. 29, 2019); Video Recording of Senate Proceedings at 52 min., 48 sec. (Feb. 1, 2021) [hereinafter Video Recording of Senate Proceedings] (remarks by Sen. John Albers (R-56th)), <https://www.gpb.org/lawmakers/2021/day-9>.

6. Video Recording of Senate Proceedings, *supra* note 5, at 53 min., 04 sec.; see generally SB 6, as

After passage in the Senate, the House of Representatives turned SB 6 into a “Christmas Tree” by introducing a substitute which piled on several miscellaneous tax breaks.⁷ The House’s substitute incorporated several other bills under consideration in the 2021–2022 legislative session, including House Bill (HB) 586, HB 587, and SB 148.⁸ Notably, SB 148 and parts of HB 587 were dropped from the final version of SB 6 passed by both houses.⁹

Bill Tracking of SB 6

Consideration and Passage by the Senate

Senator John Albers (R-56th) sponsored SB 6 in the Senate with Senator Chuck Hufstetler (R-52nd), Senator Jeff Mullis (R-53rd), Senator Steve Gooch (R-51st), Senator Brian Strickland (R-17th), Senator John Kennedy (R-18th), Senator Lindsey Tippins (R-37th), Senator Donzella James (D-35th), Senator Lee Anderson (R-24th), Senator Carden Summers (R-13th), Senator Sheila McNeill (R-3rd), Senator Billy Hickman (R-4th), Senator Nan Orrock (D-36th), Senator Butch Miller (R-49th), Senator Brandon Beach (R-21st), Senator Bruce Thompson (R-14th), and Senator Bill Cowsert (R-46th) cosponsoring.¹⁰

The bill was placed in the Senate hopper on January 13, 2021, and the Senate read the bill for the first time on January 14, 2021.¹¹ On the same day, the Senate referred the bill to the Finance Committee, who reported favorably on the bill on January 28, 2021.¹² The bill was read for a second time on January 29, 2021, before being engrossed prior to

introduced, 2021 Ga. Gen. Assemb.

7. James Salzer, *Georgia Lawmakers Approve Bill to Review, Add Tax Breaks*, ATLANTA J.-CONST. (Mar. 31, 2021), <https://www.ajc.com/politics/georgia-lawmakers-approve-bill-to-review-add-tax-breaks/ALYT5UK3K5BT7GRR3JPL2CPPSQ/> [<https://perma.cc/ZG9J-UJY4>].

8. Video Recording of House Proceedings at 1 hr., 16 min., 06 sec. (Mar. 25, 2021) [hereinafter House Proceedings Day 38 Video] (remarks by Rep. Shaw Blackmon (R-146th)), <https://www.gpb.org/lawmakers/2021/day-38>.

9. Compare SB 6 (LC 43 2030S), 2021 Ga. Gen. Assemb., with SB 6 (CCS), 2021 Ga. Gen. Assemb.

10. Georgia General Assembly, SB 6, Bill Tracking [hereinafter SB 6, Bill Tracking], <https://www.legis.ga.gov/legislation/58884>.

11. State of Georgia Final Composite Status Sheet, SB 6, May 13, 2021.

12. *Id.*

its third reading on February 1, 2021.¹³ The Senate passed the bill unanimously on February 1, 2021.¹⁴

Consideration and Passage by the House

Following the passage of SB 6 in the Senate, the House read the bill for the first time on February 2, 2021, after which it was referred to the House Ways and Means Committee.¹⁵ The House read the bill for the second time on February 3, 2021.¹⁶

On March 25, 2021, the House Ways and Means Committee reported favorably on the bill by introducing a substitute that significantly expanded the bill and added tax breaks for businesses and activities such as medical and pharmaceutical manufacturers, port traffic, high-impact aerospace defense projects, agribusiness, railroads, projects of regional significance, admission to fine arts performances or exhibitions, concrete companies, and boat maintenance.¹⁷ Almost immediately, on March 25, 2021, the House substitute was withdrawn and replaced by a second substitute that added the creation of a Special Counsel on Tax Reform and Fairness to provide a holistic review of Georgia's tax code and ensure Georgia's economic competitiveness for the next decade.¹⁸

The second House substitute passed after being read for the third time on March 25, 2021, by a vote of 152 to 14.¹⁹

13. *Id.*

14. *Id.*; Georgia Senate Voting Record, SB 6, #15 (Feb. 1, 2021).

15. State of Georgia Final Composite Status Sheet, SB 6, May 13, 2021.

16. *Id.*

17. SB 6, Bill Tracking, *supra* note 10. *Compare* SB 6, as passed Senate, 2021 Ga. Gen. Assemb., with SB 6 (LC 43 2012S), 2021 Ga. Gen. Assemb.

18. State of Georgia Final Composite Status Sheet, SB 6, May 13, 2021; Video Recording of Senate Proceedings, *supra* note 5, at 2 hr., 27 min., 45 sec. (Feb. 1, 2021) (remarks by Sen. Chuck Hufstetler (R-52nd)),

https://www.youtube.com/watch?v=KIPfkBa9NpI&list=PltnbuO1Wh9L4OBgXMYH_ifNsbr0WS97X_&index=88. *Compare* SB 6 (LC 43 2012S), 2021 Ga. Gen. Assemb., with SB 6 (LC 43 2030S), 2021 Ga. Gen. Assemb.

19. State of Georgia Final Composite Status Sheet, SB 6, May 13, 2021; Georgia House of Representatives Voting Record, SB 6, #302 (Mar. 25, 2021).

Conference Committee for SB 6

On March 25, 2021, the vote for the substitute of SB 6 carried the House, but the Senate disagreed with the substitute.²⁰ After the House insisted, both chambers agreed to establish a Conference Committee consisting of Senator Albers, Senator Hufstetler, Senator Ben Watson (R-1st), Representative Shaw Blackmon (R-146th), Representative Bruce Williamson (R-115th), and Representative Jon Burns (R-159th).²¹ The Conference Committee developed a substitute, which both the House and the Senate adopted on March 31, 2021.²² The Conference Committee substitute carried the Senate by a vote of 52 to 0 and carried the House by a vote of 146 to 25.²³ Notably, the Conference Committee substitute dropped the tax breaks for agribusiness and port traffic, as well as the creation of the Special Counsel on Tax Reform and Fairness, but added several additional tax breaks for activities such as the rehabilitation of historic structures and retail business.²⁴ Governor Brian Kemp signed SB 6 on May 4, 2021.²⁵

*Bill Tracking of HB 586**Consideration and Passage by the House*

Representatives Sam Watson (R-172nd), John Corbett (R-174th), Penny Houston (R-170th), Shaw Blackmon (R-146th), Bonnie Rich (R-97th), and Gregg Kennard (D-102nd) sponsored HB 586, also called the “Georgia Economic Recovery Act of 2021,” and were instrumental in its passage.²⁶ The bill was placed in the House hopper on February 22, 2021.²⁷ The House read the bill for the first time on

20. State of Georgia Final Composite Status Sheet, SB 6, May 13, 2021.

21. *Id.*

22. *Id.*

23. Georgia Senate Voting Record, SB 6, #429 (Mar. 31, 2021); Georgia House of Representatives Voting Record, SB 6, #421 (Mar. 31, 2021).

24. *Compare* SB 6 (LC 43 2030S), 2021 Ga. Gen. Assemb., *with* SB 6 (CCS), 2021 Ga. Gen. Assemb.

25. State of Georgia Final Composite Status Sheet, SB 6, May 13, 2021.

26. Georgia General Assembly, HB 586, Bill Tracking [hereinafter HB 586, Bill Tracking], <https://www.legis.ga.gov/legislation/59947>.

27. State of Georgia Final Composite Status Sheet, HB 586, May 13, 2021.

February 23, 2021, and for the second time on February 24, 2021.²⁸ Subsequently, the House referred the bill to the Ways and Means Committee, which reported favorably on February 26, 2021, by introducing a substitute that expanded some of the proposed sales exemptions.²⁹ Notably, the substitute removed the exclusion of Joint County and Municipal Sales and Use Taxes, Homestead Option Taxes, County Sales and Use Taxes, Water and Sewer Projects and Costs Taxes, Special District Transportation Sales and Use Taxes, and Special District Mass Transportation Sales and Use Taxes from the pool of proposed exempted sales and use taxes.³⁰ The House substitute passed after being read for the third time on March 3, 2021, by a vote of 164 to 6.³¹

Consideration and Passage by the Senate

After the passage of HB 586 in the House, the Senate read the bill for the first time on March 5, 2021, and referred it to the Senate Finance Committee.³² The Committee reported favorably on the bill on March 25, 2021, and the Senate read the bill for the second time on the same day.³³ HB 586 was tabled in both houses after being added to SB 6 by the House of Representatives.³⁴

Bill Tracking of HB 587

Consideration and Passage by the House

Representatives Bruce Williamson (R-115th), Bert Reeves (R-34th), Shaw Blackmon (R-146th), Rick Jasperse (R-11th), Spencer Frye (D-118th), and Patty Bentley (D-139th) sponsored HB 587, also

28. *Id.*

29. *Id.*

30. *Compare* HB 586, as introduced, 2021 Ga. Gen. Assemb., *with* HB 586 (LC 43 1966S/HS), 2021 Ga. Gen. Assemb.

31. State of Georgia Final Composite Status Sheet, HB 586, May 13, 2021; Georgia House of Representatives Voting Record, HB 586, #136 (Mar. 3, 2021).

32. State of Georgia Final Composite Status Sheet, HB 586, May 13, 2021.

33. *Id.*

34. *Id.*; House Proceedings Day 38 Video, *supra* note 8, at 1 hr., 16 min., 06 sec.

called the “Georgia Economic Renewal Act of 2021.”³⁵ The bill was placed in the House hopper on February 22, 2021.³⁶ The House read the bill for the first time on February 23, 2021, and for the second time on February 24, 2021.³⁷ Subsequently, the House referred the bill to the Ways and Means Committee, which reported favorably on February 26, 2021, by introducing a substitute that made a minor change to the definition of “eligible business.”³⁸ The House substitute passed after being read for the third time on March 3, 2021, by a vote of 157 to 14.³⁹

Consideration and Passage by the Senate

After the passage of HB 587 in the House, the Senate read the bill for the first time on March 5, 2021, after which it was referred to the Senate Finance Committee.⁴⁰ The Committee reported favorably on the bill on March 25, 2021, and the Senate read the bill for the second time on the same day.⁴¹ The Senate then engrossed and tabled HB 587 on March 29, 2021, after the House added HB 587 to SB 6.⁴²

Bill Tracking of SB 148

Consideration and Passage by the Senate

Senator Chuck Hufstetler (R-52nd), along with thirty-seven other senators, sponsored SB 148 in the Senate.⁴³

35. Georgia General Assembly, HB 587, Bill Tracking [hereinafter HB 587, Bill Tracking], <https://www.legis.ga.gov/legislation/59948>.

36. State of Georgia Final Composite Status Sheet, HB 587, May 13, 2021.

37. *Id.*

38. HB 587, Bill Tracking, *supra* note 35. *Compare* HB 587, as introduced, 2021 Ga. Gen. Assemb., with HB 587 (LC 43 1959S), 2021 Ga. Gen. Assemb. (removed “qualified area” from definition, restricting eligible business only to those located in one or more rural areas).

39. House of Representatives Voting Record, HB 587, #135 (Mar. 3, 2021).

40. State of Georgia Final Composite Status Sheet, HB 587, May 13, 2021.

41. *Id.*

42. *Id.*; House Proceedings Day 38 Video, *supra* note 8, at 1 hr., 16 min., 06 sec.

43. Georgia General Assembly, SB 148, Bill Tracking [hereinafter SB 148, Bill Tracking], <https://www.legis.ga.gov/legislation/59556>.

The bill was placed in the Senate hopper on February 10, 2021, and the Senate first read it on February 11, 2021.⁴⁴ That same day, the Senate referred the bill to the Finance Committee, which reported favorably on the bill by substitute on February 18, 2021.⁴⁵ The substitute added two ex officio, nonvoting members to the 2021 Special Council on Tax Reform and Fairness for Georgians: (1) the President of the Metro Atlanta Chamber of Commerce, and (2) the Commissioner of the Department of Economic Development, or their respective designees.⁴⁶

The Senate read the bill for a second time on February 22, 2021.⁴⁷ After engrossing SB 148 on February 24, 2021, the Senate read SB 148 for a third time and passed the bill unanimously.⁴⁸

Consideration by the House

After the passage of SB 148 in the Senate, the House read the bill for the first time on February 25, 2021.⁴⁹ The House read the bill for a second time on February 26, 2021, before referring it to the Budget and Fiscal Affairs Oversight Committee, which reported favorably on the bill by substitute on March 16, 2021.⁵⁰ The House read SB 148 for a third time on March 18, 2021, after which the House voted against the bill 20 to 139.⁵¹ SB 148 was briefly added to SB 6 by the House before ultimately being dropped from the final Conference Committee bill on SB 6.⁵²

The Act

The Act is broken into eight parts which affect various portions of the Official Code of Georgia Annotated: Part I of the Act creates Code

44. State of Georgia Final Composite Status Sheet, SB 148, May 13, 2021.

45. *Id.*

46. *Compare* SB 148, as introduced, 2021 Ga. Gen. Assemb., *with* SB 148 (SCS), 2021 Ga. Gen. Assemb.

47. State of Georgia Final Composite Status Sheet, SB 148, May 13, 2021.

48. *Id.*; Georgia Senate Voting Record, SB 148, #72 (Feb. 24, 2021).

49. State of Georgia Final Composite Status Sheet, SB 148, May 13, 2021.

50. *Id.*

51. *Id.*; Georgia House of Representatives Voting Record, SB 148, #272 (Mar. 18, 2021).

52. *Compare* SB 6 (LC 43 2030S), 2021 Ga. Gen. Assemb., *with* SB 6 (CCS), 2021 Ga. Gen. Assemb.

section 28-5-41.1; Part II of the Act creates Code section 48-7-40.1B and amends Code sections 48-7-40.1A, 48-7-40.24, and 48-7-40.25; Part IV of the Act amends Code section 48-7-40.34; Part V of the Act amends Code section 48-8-3; and Part VII of the Act amends Code sections 48-7-29.8, 48-7-40.12, and 48-8-3.⁵³ Part III of the Act was removed prior to passage, and Part VIII of the Act provides for effective dates.⁵⁴

The Act's overall purpose can be broken into two themes. First, SB 6, as introduced, aims to create a process by which the Senate and the House of Representatives can each ask for an economic analysis of up to five tax breaks per year to determine the effectiveness of those tax breaks.⁵⁵ This review process aims to give legislators a mechanism by which they can seek the repeal of ineffective tax breaks.⁵⁶ Second, the House added, and the Conference Committee later adopted, extensions to many existing tax breaks and created several others.⁵⁷ Thus, SB 6 creates or extends tax breaks while establishing a process under which those same tax breaks can eventually be reviewed and repealed.

Part I

Section 1-1 divides the Act into three segments where Part I is designated as the "Tax Credit Return on Investment Act of 2021," Parts II through IV are designated as the "Georgia Economic Renewal Act of 2021," and Part V is designated as the "Georgia Recovery Act of 2021."⁵⁸ The division of the Act in this way largely tracks the original structure of SB 6, HB 586, and HB 587, which were combined in the House substitute to SB 6 and largely adopted by the Conference Committee.⁵⁹

53. *See generally* 2021 Ga. Laws 289.

54. 2021 Ga. Laws 289, §§ 3-1, 8-1, at 301, 310.

55. Telephone Interview with Sen. Chuck Hufstetler (R-52nd) (June 9, 2021) (on file with the Georgia State University Law Review) [hereinafter Hufstetler Interview].

56. *Id.*

57. *Id.*

58. 2021 Ga. Laws 289, § 1-1, at 290.

59. *See id.*; *see also* SB 6, as introduced, 2021 Ga. Gen. Assemb.; HB 586, as introduced, 2021 Ga. Gen. Assemb.; HB 587, as introduced, 2021 Ga. Gen. Assemb.

Section 1-2 of the Act creates Code section 28-5-41.1, which provides that both the Chairperson of the House Committee on Ways and Means and the Chairperson of the Senate Finance Committee can each request up to five economic analyses per year if they submit a request to the Department of Audits and Accounts on or before May 1.⁶⁰ The subject of the request may be an exemption, exclusion, or deduction for the base of a tax, a credit against a tax, a deferral of a tax, a rebate of taxes paid, a tax abatement, or a preferential tax rate that is either existing or proposed in Georgia law at the time of the request.⁶¹ Upon receipt of the request for review, the Department of Audits and Accounts can contract with third parties to review the selected tax break and provide a good-faith estimate, on both a direct and indirect basis, of the tax break's five-year impact on the (1) net change in state revenue; (2) net change in state expenditures, including the cost to administer the tax break; (3) net change in economic activity; and (4) net change in public benefit, if any.⁶² The Department of Audits and Accounts must deliver the requested economic analyses to the House Budget and Research Office and the Senate Budget and Evaluation Office by December 1 of the year of the request.⁶³ Paragraph (e) of Section 1-2 specifically provides for the first tax break to be reviewed under the Act, calling for a review of Code section 33-1-25, the Georgia Agribusiness and Rural Jobs Act, by December 1, 2021.⁶⁴

Additionally, Section 1-2 provides that when a fiscal note is requested pursuant to Code section 28-5-42, and an economic analysis has been done under the Act within one year of the request for that fiscal note, the Office of Planning and Budget may prepare a summary of the economic analysis and attach it to the requested fiscal note.⁶⁵

Part II

Part II of the Act establishes two new tax credits. Sections 2-1 and 2-2 establish a tax credit for manufacturers of either medical

60. 2021 Ga. Laws 289, § 1-2, at 290 (codified at O.C.G.A. § 28-5-41.1(b) (Supp. 2021)).

61. *Id.* at 290 (codified at § 28-5-41.1(b)).

62. *Id.* at 290 (codified at § 28-5-41.1(a)(1)-(4)).

63. *Id.* at 290–91 (codified at § 28-5-41.1(b)-(c)).

64. *Id.* at 291 (codified at § 28-5-41.1(e)).

65. *Id.* at 291 (codified at § 28-5-41.1(d)).

equipment and supplies or pharmaceuticals and medicine, while Sections 2-3 and 2-4 establish a tax credit for qualifying high-impact aerospace defense projects.

Sections 2-1 and 2-2

Section 2-1 establishes Code section 48-7-40.1B, which provides for an additional tax credit of \$1,250 for each qualifying job created at a medical equipment and supplies manufacturer or a pharmaceutical and medicine manufacturer on or after July 1, 2021, if that manufacturer is eligible to claim a tax credit under either Code section 48-7-40 or 48-7-40.1.⁶⁶ A medical equipment and supplies manufacturer is a taxpayer operating in Georgia and classified under the North American Industry Classification System (NAICS) Industry Code 3391—Medical Equipment and Supplies Manufacturing; and a pharmaceutical and medicine manufacturer is a taxpayer operating in Georgia and classified under the NAICS Industry Code 3254—Pharmaceutical and Medicine Manufacturing.⁶⁷ Neither classification encompasses retail sales, but to the extent that a taxpayer engages in both manufacturing and retail sales, the taxpayer may claim the additional tax credit for manufacturing jobs created on or after July 1, 2021.⁶⁸

Manufacturers receiving the tax credit are eligible for a 100% offset against their tax liability.⁶⁹ To the extent that the tax credit exceeds the manufacturer's tax liability, the credit can be rolled over for up to ten calendar years and can be used as credit against the monthly or quarterly tax payments required by Code section 48-7-103.⁷⁰

The tax credit provided in Section 2-1 can be taken in conjunction with the tax credit provided in Code section 48-7-40.15, but the Act specifically disallows taking the tax credit in conjunction with the tax credit provided in Code section 48-7-40.1A.⁷¹ Code Section 48-7-40.1A provides a tax credit for personal protective equipment

66. 2021 Ga. Laws 289, § 2-1, at 291 (codified at O.C.G.A. § 48-7-40.1B(b)(1) (Supp. 2021)).

67. *Id.* at 291 (codified at § 48-7-40.1B(a)(2)).

68. *Id.* at 291 (codified at § 48-7-40.1B(b)(1)-(2)).

69. *Id.* at 292 (codified at § 48-7-40.1B(b)(2)).

70. *Id.* at 292 (codified at § 48-7-40.1B(c)(1)).

71. *Id.* at 292 (codified at § 48-7-40.1B(b)(3), (c)(2)).

(PPE) manufacturers, and Section 2-2 of the Act similarly amends this Code section to disallow taking the tax credit for PPE manufacturers in conjunction with the newly created tax credit in Section 2-1.⁷² In other words, the tax credit for PPE manufacturers and the tax credit for manufacturers of medical equipment and supplies or manufacturers of pharmaceuticals and medicine are mutually exclusive.

Sections 2-3 and 2-4

Section 2-3 of the Act amends Code section 48-7-40.24, which provides for the New Facility Job Credit in three significant ways.⁷³ First, the Act eliminates the current cap of 4,500 jobs, allowing an unlimited number of jobs to qualify for the New Facilities Job Credit of \$5,250 per job, beginning in the 2022 tax year.⁷⁴ Second, the Act allows a taxpayer who is authorized to claim, and does claim, tax credits for high-impact aerospace defense projects to claim both the New Facilities Job Credit and the Establishing or Relocating Quality Jobs Credit in Code section 48-7-40.17 so long as the credits are not claimed in the same taxable year.⁷⁵ Finally, the Act creates reporting requirements for taxpayers claiming the New Facility Job Credit.⁷⁶ Specifically, taxpayers who claim the New Facility Job Credit must report the total number of full-time employees working at qualified projects and the total amount of qualified investment property made into such projects to a panel composed of the Commissioner of Community Affairs, the Commissioner of Economic Development, and the Director of the Office of Planning and Budget by December 1 of each tax year.⁷⁷ Section 2-3 further requires the panel to compile a report with a summary of all taxpayers claiming the New Facility Job Credit and provide it to the Chairperson of the House Committee on Ways and Means and the Chairperson of the Senate Finance Committee.⁷⁸

72. 2021 Ga. Laws 289, § 2-2, 292 (codified at O.C.G.A. § 48-7-40.1A(b)(1) (Supp. 2021)).

73. *See generally* 2021 Ga. Laws 289, § 2-3.

74. 2021 Ga. Laws 289, § 2-3, at 293 (codified at O.C.G.A. § 48-7-40.24(d) (Supp. 2021)).

75. *Id.* at 293 (codified at § 48-7-40.24(i)(2) (Supp. 2021)).

76. *Id.* at 293 (codified at § 48-7-40.24(p)-(q) (Supp. 2021)).

77. *Id.* at 293 (codified at § 48-7-40.24(p) (Supp. 2021)).

78. *Id.* at 293 (codified at § 48-7-40.24(q)).

Section 2-4 of the Act amends Code section 28-7-40.25, providing for the New Manufacturing Facilities Investment Credit, to create different rules for high-impact aerospace defense projects.⁷⁹ Importantly, Section 2-4 of the Act adds Code section 48-7-40.25(4.1), which defines a high-impact aerospace defense project as a qualified project that (1) is constructed by a business enterprise that is a prime aerospace defense contractor with greater than forty percent of its revenues derived from sales to the United States government in its most recent tax year and (2) is certified by the Commissioner of Economic Development as materially supportive of the Georgia Joint Defense Commission's mission and the Governor's Defense Initiative.⁸⁰

Projects qualifying as high-impact aerospace defense projects benefit from three favorable modifications under the Act. First, taxpayers who sponsor a qualified high-impact aerospace defense project can begin claiming the New Manufacturing Facilities Investment Credit before fully meeting the job or investment requirement of Code section 40-7-40.25 provided that the taxpayers affirm their intention to meet the requirements.⁸¹ Second, the Act raises the cap on the total tax credit that can be claimed on a project from \$50 million to \$100 million for high-impact aerospace defense projects.⁸² Finally, the Act allows a taxpayer who is authorized to claim, and does claim, tax credits for high-impact aerospace defense projects to also claim the tax credits in Code sections 48-7-40.24 and 40-7-40.17. As discussed above, Section 2-3 of the Act makes the tax credits offered in these Code sections mutually exclusive for any given tax year, meaning a taxpayer must claim the most beneficial of the two

79. See generally 2021 Ga. Laws 289, § 2-4.

80. 2021 Ga. Laws 289, § 2-4, at 295 (codified at O.C.G.A. § 48-7-40.25(a)(4.1) (Supp. 2021)).

81. *Id.* at 295-96 (codified at § 48-7-40.25(a)). Code section 48-7-40.25 generally requires an investment of \$800 million and the creation of 1,800 jobs, but taxpayers sponsoring high-impact aerospace defense projects can claim the deduction after making an investment of \$500 million and creating 1,000 jobs so long as they affirm that they will meet the \$800 million investment and employ at least 1,800 employees. *Id.* at 295-96 (codified at § 48-7-40.25(a)(7), (b)(1)(C)). To the extent that the taxpayer fails to meet the requirements by the end of the tenth year of the credit recapture period, they forfeit all credits under Code section 48-7-40.25 for the project. *Id.* at 299 (codified at § 48-7-40.25(h)(2)).

82. *Id.* at 299 (codified at § 48-7-40.25(f)(1) (Supp. 2021)).

tax credits in conjunction with the New Manufacturing Facilities Investment Credit.⁸³

Part III

Part III of the act was removed prior to passage.⁸⁴

Part IV

Part IV of the Act amends Code section 48-7-40.34, revising tax credits for Class III railroads.⁸⁵ The revision extends current income tax credits for railroad track maintenance expenditures by three years.⁸⁶ The amendment also extends by three years the period in which the Commissioner of the Georgia Department of Revenue must issue an annual report concerning the tax credit to the Senate Finance Committee and the House Committee on Ways and Means.⁸⁷

Part V

Part V of the Act extends certain tax exemption expirations and establishes a new tax exemption.⁸⁸ Section 5-1 amends paragraph 93 of Code section 48-8-3 to extend the sunset provision by two years for the tax exemption of tangible personal property sales used for the construction of projects of regional significance.⁸⁹ These types of projects are defined as those that the Commissioner of Economic Development determines would have a significant regional impact.⁹⁰

Section 5-2 adds a new sales and use tax exemption to paragraph 100 of Code section 48-8-3.⁹¹ The new exemption applies to sales of

83. *Id.* at 299 (codified at § 48-7-40.25(g)(1)-(2)); *see also* 2021 Ga. Laws 289, § 2-3, at 293 (codified at O.C.G.A. § 48-7-40.24(i)(2) (Supp. 2021)).

84. *See generally* 2021 Ga. Laws 289, § 3-1.

85. 2021 Ga. Laws 289, § 4-1, at 301 (codified at O.C.G.A. § 48-7-40.34(b) (Supp. 2021)).

86. *Id.* at 301 (codified at § 48-7-40.34(b)).

87. *Id.* at 301 (codified at § 48-7-40.34(f)).

88. *See* 2021 Ga. Laws 289, § 5-1, -2, -3, -4, at 301-03.

89. 2021 Ga. Laws 289, § 5-1, at 301 (codified at O.C.G.A. § 48-8-3(93) (Supp. 2021)).

90. *Id.* at 302 (codified at § 48-8-3(93)(D)).

91. 2021 Ga. Laws 289, § 5-2, at 302 (codified at O.C.G.A. § 48-8-3(100)(A) (Supp. 2021)).

tickets, fees, or admission charges to fine arts performances.⁹² To qualify, the organization hosting the performances must have tax exempt status per the Internal Revenue Code or be a museum of cultural significance.⁹³ Further, the organization's or museum's mission must be to advance the arts, and it must provide culturally significant, educational programming for Georgia citizens.⁹⁴

Section 5-3 amends Code section 48-8-3.2 to extend qualifying sales tax exemptions for manufacturers to the year 2026.⁹⁵ The exemption applies to maintenance and replacement parts for machinery used to mix or transport freshly mixed concrete.⁹⁶

Section 5-4 amends Code section 48-8-3.4 to extend the expiration of a \$35,000 tax ceiling on the sales and use tax for boat maintenance to the year 2031.⁹⁷

Part VI

Part VI modifies Code section 48-7-29.8, which relates to tax credits for the rehabilitation of historic structures.⁹⁸ The section allows taxpayers to claim a certified rehabilitation tax credit for rehabilitating and placing into service certain historic structures.⁹⁹ The types of structures that qualify include those located within a national historic district and those individually listed in historic registries or historic homes.¹⁰⁰ The amendment limits legacy credits—those issued prior to January 1, 2020—to an aggregate cap of \$25 million per calendar year.¹⁰¹ For calendar year 2022 and beyond, tax credits for rehabilitation projects earning \$300,000 or less are capped at a \$5 million aggregate, and projects earning more than \$300,000 are capped at a \$25 million aggregate.¹⁰² Finally, the amendment sets an

92. *Id.* at 302 (codified at § 48-8-3(100)(A)).

93. *Id.* at 302 (codified at § 48-8-3(100)(A)).

94. *Id.* at 302 (codified at § 48-8-3(100)(A)).

95. 2021 Ga. Laws 289, § 5-3, at 302–03 (codified at O.C.G.A. § 48-8-3.2(e)(12) (Supp. 2021)).

96. *Id.* at 302–03 (codified at § 48-8-3.2(e)(12) (Supp. 2020)).

97. 2021 Ga. Laws 289, § 5-4, at 303 (codified at O.C.G.A. § 48-8-3.4(b) (Supp. 2021)).

98. *See generally* 2021 Ga. Laws 289, § 6-1.

99. O.C.G.A. § 48-7-29.8 (Supp. 2020).

100. *Id.*

101. *Id.* at 305 (codified at § 48-7-29.8(c)(3)(A)).

102. *Id.* at 305 (codified at § 48-7-29.8(c)(3)(B)).

expiration for these tax credits in which credits will no longer be issued on or after January 1, 2023.¹⁰³

Part VII

Part VII amends current tax credits and exemptions to clarify definitions of qualifying entities and adds reporting requirements for some tax exemptions.¹⁰⁴

Section 7-1 amends Code section 48-7-40.12, which relates to tax credits for qualified research expenses.¹⁰⁵ The tax credit applies to businesses engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries.¹⁰⁶ The definition for qualifying businesses excludes retail businesses.¹⁰⁷ Section 7-1 amends the definition to provide an exception for businesses that would otherwise qualify for the tax credit but have retail operations through their affiliate entities.¹⁰⁸

Section 7-2 amends paragraph 68 of Code section 48-8-3, which relates to tax exemptions for qualifying high-technology companies.¹⁰⁹ The amendment updates the NAICS codes for qualifying companies and requires that these companies receiving exemptions submit an annual report to the Department of Revenue detailing the total sales taxes exempted.¹¹⁰ Section 7-2 also amends the exclusion of “telephone central office equipment or other voice data transport technology” to specify that the exclusion also includes “any wireline or wireless telecommunication system.”¹¹¹ Finally, the amendment adds a sunset of June 30, 2023, to the tax exemption.¹¹²

103. *Id.* at 305 (codified at § 48-7-29.8(c)(3)(C)).

104. *See generally* 2021 Ga. Laws 289, § 7-1, -2.

105. 2021 Ga. Laws 289, § 7-1, at 308 (codified at O.C.G.A § 48-7-40.12(a)(3) (Supp. 2021)).

106. *Id.* at 308 (codified at § 48-7-40.12(a)(3)).

107. *Id.* at 308 (codified at § 48-7-40.12(a)(3)).

108. 2021 Ga. Laws 289, § 7-1, at 308 (codified at O.C.G.A § 48-7-40.12(a)(3) (Supp. 2021)).

109. 2021 Ga. Laws 289, § 7-2, at 309–10 (codified at O.C.G.A § 48-8-3(68)(A) (Supp. 2021)). Qualifying high-technology companies include those that invest at least \$15 million in eligible computer equipment in Georgia during a calendar year. *Id.* at 309 (codified at § 48-8-3(68)(A)).

110. *Id.* at 309 (codified at § 48-8-3(68)(A)).

111. *Id.* at 309 (codified at § 48-8-3(68)(C)(ii)(I)).

112. *Id.* at 310 (codified at § 48-8-3(68)(G)).

Part VIII

Part VIII of the Act provides that the effective date of the Act shall be July 1, 2021.¹¹³

*Analysis**The Tax Credit Return on Investment Act*

Legislators frequently use tax breaks as a tool to achieve policy goals, but the promised benefits often fail to materialize, and follow-up evaluation is nonexistent.¹¹⁴ In 2017, The Pew Charitable Trusts published a study that rated each of the fifty states as “leading,” “making progress,” or “trailing” in their processes for gathering information and evaluating the economic and fiscal impact of available tax breaks.¹¹⁵ Georgia’s rating was “trailing.”¹¹⁶ The lack of an effective review process for evaluating the economic impact of Georgia’s tax breaks meant that Georgia’s legislators were not getting the information needed to make informed policy choices.¹¹⁷

Beginning in 2022, Georgia’s legislators will have a process to request an independent economic analysis of up to five tax breaks per year, giving legislators the ability to gather valuable information as they consider the extension, creation, or repeal of tax breaks.¹¹⁸ SB 6 specifies that the Georgia Agribusiness and Rural Jobs Act will be the first tax break reviewed, but legislators are already planning for future reviews.¹¹⁹ The initial indication is that the largest ten tax breaks will be the first reviewed, but the door remains open to a more nuanced

113. *See generally* 2021 Ga. Laws 289, § 8-1, -2.

114. SUSAN K. URAHN, KIL HUH, JEFF CHAPMAN, CHAARON PEARSON, JOSH GOODMAN, MELISSA MAYNARD, ALISON WAKEFIELD, MIRIELLE BURGOYNE ET AL., HOW STATES ARE IMPROVING TAX INCENTIVES FOR JOBS AND GROWTH, THE PEW CHARITABLE TR. 1 (2017) [hereinafter THE PEW REPORT], https://www.pewtrusts.org/-/media/assets/2017/05/edti_how_states_are_improving_tax_incentives_for_jobs_and_growth.pdf [https://perma.cc/7ZD5-H3K4]; Hufstetler Interview, *supra* note 55.

115. THE PEW REPORT, *supra* note 114, at 1.

116. THE PEW REPORT, *supra* note 114, at 2 fig. 1.

117. *See* THE PEW REPORT, *supra* note 114, at 47.

118. 2021 Ga. Laws 289, § 1-2, at 290 (codified at O.C.G.A. § 28-5-41.1(b) (Supp. 2021)).

119. *Id.* at 291 (codified at § 28-5-41.1(e)); Hufstetler Interview, *supra* note 55.

approach that targets tax breaks that lawmakers believe are ineffective.¹²⁰

Although many might celebrate a bill that purports to give legislators better information to make effective policy choices, not everyone finds the bill entirely agreeable. Representative Philip Singleton (R-71st) voted against SB 6 largely due to his opposition to many of the tax breaks contained in the bill, but he also said that, in theory, he supports reviewing the effectiveness of tax breaks.¹²¹ His hesitation is grounded in the fact that the data needed for the analysis is complicated and hard to gather.¹²² In other words, the effectiveness of the bill will only be as good as the analysis performed.

A Failed Compromise

Part III of the House substitute for SB 6 provided for a second round of funding for the Georgia Agribusiness and Rural Jobs Act, codified at Code section 33-1-25, but the Conference Committee declined to incorporate the second round of funding in the final version of the bill passed by both houses.¹²³ The omission stems from a failed compromise between legislators who wanted the additional funding in exchange for the creation of the 2021 Special Council on Tax Reform and Fairness for Georgians, originally proposed in SB 148.¹²⁴ Senator Chuck Hufstetler (R-52nd), who was a sponsor of SB 148 and the primary proponent of the Special Council, refused to agree to the additional funding, citing the wasteful nature of the Georgia Agribusiness and Rural Jobs Act, which mirrors the national program, CAPCO.¹²⁵

Independent analysis of Georgia's CAPCO program indicates that the program concentrated the receipt of tax credits to only five firms and failed to create the promised jobs and tax revenue.¹²⁶ In fact, three

120. Hufstetler Interview, *supra* note 55.

121. Telephone Interview with Rep. Philip Singleton (R-71st) (July 16, 2021) (on file with the Georgia State University Law Review) [hereinafter Singleton Interview].

122. *Id.*

123. Compare SB 6 (LC 43 2030S), 2021 Ga. Gen. Assemb., with SB 6 (CCS), 2021 Ga. Gen. Assemb.

124. Hufstetler Interview, *supra* note 55; see generally SB 148, as introduced, 2021 Ga. Gen. Assemb.

125. Hufstetler Interview, *supra* note 55.

126. Danny Kanso & Dustin Truong, *Costly Corporate Tax Break Package Would Give Millions to*

other states that instituted CAPCO programs saw only pennies returned per dollar of tax credit invested by the state.¹²⁷ For example, for every dollar of tax credit given in Arkansas, \$0.25–\$0.30 made it to the desired project goal.¹²⁸ As mentioned previously, Part I of the Act specifically provides for an economic analysis of the Georgia Agribusiness and Rural Jobs Act by December 1, 2021.¹²⁹

Senator Hufstetler hopes to propose the Special Council on Tax Reform and Fairness for Georgians in a future legislative session so that Georgia can complete a holistic review of the tax system as was done in 2010.¹³⁰

Christmas in July

The House substitute to SB 6, which the Conference Committee largely adopted, combined several other bills being considered and turned SB 6 into a “Christmas Tree” bill by creating or extending many tax breaks effective July 1, 2021.¹³¹ The following section addresses several of the miscellaneous tax breaks impacted by the Act.

A Tax Credit for Lockheed Martin

Sections 2-3 and 2-4 of the Act make many favorable changes to existing tax credits for high-impact aerospace defense projects that are primarily aimed at incentivizing Lockheed Martin to build its next fighter jet in Georgia.¹³² It is unclear whether Lockheed Martin will win its bid for the proposed project, which would bring an estimated 1,800 to 3,300 jobs to Georgia.¹³³ Given the scale of the project and the narrow qualifications, it is unlikely that qualifying projects for this

Wealthy Corporations, GA. BUDGET & POL’Y INST. 3–4 (Mar. 2021), <https://gbpi.org/wp-content/uploads/2021/03/20210310-capcobillana.pdf> [<https://perma.cc/A65C-D954>].

127. *Id.* at 4.

128. *Id.*

129. 2021 Ga. Laws 289, § 1-2, at 291 (codified at O.C.G.A. § 28-5-41.1(e) (Supp. 2021)).

130. Hufstetler Interview, *supra* note 55.

131. *See supra* History.

132. *See supra* Sections 2-3 and 2-4; Hufstetler Interview, *supra* note 55; Kanso & Truong, *supra* note 126, at 5.

133. Hufstetler Interview, *supra* note 55; Kanso & Truong, *supra* note 126, at 5.

tax credit will come around often.¹³⁴ Representative Singleton cited tax breaks like this, which funnel benefits to specific companies, as his primary reason for opposing SB 6.¹³⁵

Yacht Repair Tax Breaks

Section 5-4 of the Act extends by ten years the sunset of tax breaks for yacht owners who agree to have their boats repaired and retrofitted in Georgia.¹³⁶ Historically, critics have taken issue with this tax break because its introduction stemmed from the lobbying efforts of a Savannah company seeking to attract clients to its yacht repair business.¹³⁷ One key criticism at the time was that this business, and others, should not factor Georgia tax dollars into their business model.¹³⁸ Those in favor of extending the tax credit cite staunch competition for this type of business with the state of Florida.¹³⁹ Florida characterizes their tax breaks in the yacht repair industry as more favorable than Georgia's tax breaks because Georgia historically had a five-year sunset.¹⁴⁰ To combat this competition, legislators composed SB 6 to extend the sunset to ten years to create long-term incentives while also ensuring that the tax break does not continue indefinitely.¹⁴¹ Consequently, the tax break will need manual review to be extended in the future.¹⁴²

134. GREG S. GRIFFIN & KELLY FARR, GA. DEP'T OF AUDITS & ACCOUNTS, FISCAL NOTE: HOUSE BILL 587 (LC 46 0015) 6 (Mar. 3, 2021) (on file with the Georgia State University Law Review).

135. Singleton Interview, *supra* note 121.

136. *See* 2021 Ga. Laws 289, § 5-4, at 303 (codified at O.C.G.A. § 48-8-3.4(d) (Supp. 2021)).

137. James Salzer, *Georgia Senators Considering Nixing or Limiting Delta, Yacht, Other Tax Breaks*, ATLANTA J.-CONST. (June 16, 2020), <https://www.ajc.com/news/state—regional-govt—politics/georgia-senators-considering-nixing-limiting-delta-yacht-other-tax-breaks/R2yY0nD4Vx17x1D8aTwyWI/> [<https://perma.cc/HZW3-QH36>].

138. James Salzer, *Move to Cut Georgia Income Taxes Fails, Lease and Yacht Breaks Pass*, ATLANTA J.-CONST. (Mar. 31, 2017), <https://www.ajc.com/news/state—regional-govt—politics/move-cut-georgia-income-taxes-fails-lease-and-yacht-breaks-pass/mH8KixRrcFmgt37VVbftOK/> [<https://perma.cc/39NG-UE4C>].

139. Hufstetler Interview, *supra* note 55.

140. *Id.*

141. *Id.*

142. *Id.*

Hail Mary Addition to Tech Tax Breaks

Section 7-2 of the Act significantly amends the tax exemption for certain investments by high-technology companies.¹⁴³ The amendment updated the list of qualifying companies, implemented an annual reporting requirement, expanded an existing exclusion from the exemption to capture additional telecommunication systems, and added a sunset to the exemption.¹⁴⁴ The exclusion expansion and sunset provision were “last minute additions by a legislative conference committee during the final hours of the legislative session,” which did not allow adequate opportunity for public comment.¹⁴⁵ Accordingly, some speculate that both provisions will be revisited in future legislative sessions where they can be more adequately vetted.¹⁴⁶

Conclusion

To maintain its status as a top state to do business, Georgia will need to ensure that proper checks and balances are in place to measure the effectiveness of the state’s tax breaks. Although SB 6, at its core, aims to do just that, the bill came with significant additions and amendments to current tax breaks. Finding the right balance that creates a favorable and cost-effective tax environment will continue to be a challenge for Georgia legislators.

Richard Hardeman & Aidan Zafar

143. See 2021 Ga. Laws 289, § 7-2, at 309–10 (codified at O.C.G.A. § 48-8-3(68)(A) (Supp. 2021)).

144. See *supra* Part VII.

145. *Georgia’s 2021 Sine Die – Thoughtful Policy Mixed with Last Minute Surprises and Everything In-Between*, EVERSHEDES SUTHERLAND (Apr. 1, 2021), <https://us.eversheds-sutherland.com/mobile/NewsCommentary/Legal-Alerts/240812/Georgias-2021-Sine-Die-Thoughtful-policy-mixed-with-last-minute-surprises-and-everything-in-between> [<https://perma.cc/88EZ-8EUR>].

146. *Id.*